

STATE OF HAWAI'I
HAWAI'I LABOR RELATIONS BOARD

In the Matter of

JONATHAN TAUM,

Complainant,

and

UNITED PUBLIC WORKERS, AFSCME,
LOCAL 646, AFL-CIO and
DEPARTMENT OF PUBLIC SAFETY,
State of Hawai'i,

Respondents.

CASE NO(S). 17-CU-10-357
 17-CE-10-906

ORDER NO. 3572

PRETRIAL ORDER AND NOTICES;

- (1) NOTICE TO RESPONDENT(S) OF
 AMENDED PROHIBITED
 PRACTICE COMPLAINT;
- (2) NOTICE OF FILING
 REQUIREMENTS;
- (3) NOTICE OF APPEARANCE AND
 ACCESSIBILITY OR
 ACCOMMODATIONS;
- (4) NOTICE OF DISPOSITIVE
 MOTION HEARING;
- (5) NOTICE OF HEARING ON THE
 MERITS; AND
- (6) SCHEDULE OF HEARINGS,
 CONFERENCES, AND
 DEADLINES

- PRETRIAL ORDER AND NOTICES;
- (1) NOTICE TO RESPONDENT(S) OF AMENDED PROHIBITED PRACTICE
COMPLAINT; (2) NOTICE OF FILING REQUIREMENTS;
(3) NOTICE OF APPEARANCE AND ACCESSIBILITY OR
ACCOMMODATIONS; (4) NOTICE OF DISPOSITIVE MOTION HEARING;
(5) NOTICE OF HEARING ON THE MERITS; AND
(6) SCHEDULE OF HEARINGS, CONFERENCES, AND DEADLINES

PRETRIAL ORDER AND NOTICES

THE PARTIES ARE HEREBY NOTIFIED AND ORDERED TO COMPLY WITH THIS PRETRIAL ORDER AND NOTICES. The Hawai'i Labor Relations Board (Board) may impose appropriate monetary or other sanctions upon parties or attorneys who do not comply with this Pretrial Order and Notice if the parties or attorneys have not shown good cause for failure to comply or a good faith effort to comply.

This document shall control the course of proceedings and may not be amended except by the Board through an Order or Notice, by a written request by a party with written consent of all the parties (stipulation), or by an order granting a motion filed with the Board. The use of singular, plural, masculine, feminine, and neuter pronouns shall include the others as the context may require.

(1) NOTICE TO RESPONDENT(S) OF AMENDED PROHIBITED PRACTICE COMPLAINT

The attached prohibited practice complaint (Complaint) was filed with the Board by the above-named Complainant(s) on: **October 24, 2019.**

PURSUANT TO HAWAII REVISSED STATUTES (HRS) § 377-9(b) AND HAWAII ADMINISTRATIVE RULES (HAR) § 12-42-42: NOTICE HEREBY GIVEN TO RESPONDENT(S) that the above-named COMPLAINANT(S) filed a prohibited practice Complaint with the Board, a copy of which is attached, alleging that you have engaged in or are engaging in prohibited practices in violation of HRS Chapter 89.

YOU ARE DIRECTED to file a written answer to the Complaint within ten (10) days after service of the Complaint. One copy of the answer shall be served on each party, and the original with certificate of service on all parties shall be filed with the Board no later than 4:30 p.m. on the tenth day after service of the Complaint. If you fail to timely file and serve an answer, such failure shall constitute an admission of the material facts alleged in the Complaint and a waiver of hearing. (HAR § 12-42-45(g))

(2) NOTICE OF FILING REQUIREMENTS

1) Electronic Filing:

The Board provides to all parties and encourages the use of an electronic filing service through File & ServeXpress. There is no charge to the parties for use of this electronic filing service.

To register, a party is required to complete and submit the Board Agreement to E-File (Form HLRB-25), as amended, which is available at <http://labor.hawaii.gov/hlrp/forms/>.

Questions regarding the Board's electronic filing system should be directed to the Board's staff at (808) 586-8616.

2) Filing in Person or by Mail

A party may mail or file in person an original of any document at the Board's office at 830 Punchbowl Street, Room 434, Honolulu, Hawai'i, 96813. The Board's office is open on the weekdays (excluding state holidays) between 7:45 a.m. to 4:30 p.m.; the office may occasionally be closed from 12:00 p.m. to 1:00 p.m. The date of receipt by the Board shall be deemed the date of filing.

3) Filing Requirements Regarding Protection of Social Security Numbers and Personal Information

Before a party files or submits any pleading, correspondence, or other document (Documents) to the Board, whether electronically or manually, the party shall make certain that all social security numbers and personal information are redacted or encrypted. "Personal information" shall include social security numbers, home addresses, dates of birth, bank account numbers, medical and health records, and any other information in which a person has a significant privacy interest. To the extent any personal information is relevant to the Board's consideration of this case, the submitting party shall submit the confidential information by means of a Confidential Information Form that substantially conforms to Form 2 of the Hawai'i Court Records Rules, as amended.

If a party submits a document that requires redaction of a page(s), the party shall by motion request permission from the Board to withdraw and replace the original document, in its entirety, with a redacted copy of such document, pursuant to HAR § 12-42-8(g)(11), "The Board may permit withdrawal of original documents upon submission of properly authenticated copies to replace such document."

The Board may impose appropriate monetary or other sanctions upon parties or attorneys who do not comply with this provision where the parties or attorneys have not shown good cause for failure to comply or a good faith attempt to comply.

(3) NOTICE OF APPEARANCE AND ACCESSIBILITY OR ACCOMMODATIONS

All parties have the right to appear in person and to be represented by counsel or any other authorized person in all Board proceedings. Auxiliary aids and services are available upon request to the parties and representatives with disabilities. For TTY, dial 711, then ask for (808) 586-8616, the Hawai'i Labor Relations Board, within seven (7) days prior to a Board proceeding. For any other accommodation, including language access, please call the Board at (808) 586-8616, at least seven (7) days prior to a Board proceeding.

The parties should be aware that the Board is in a secured State of Hawai‘i building and that any party, representative, counsel, or other person attending a proceeding will need to present a government-issued identification for entry.

(4) NOTICE OF HEARING ON DISPOSITIVE MOTIONS

PURSUANT TO HRS §§ 89-5(i)(4) and (i)(5), and 377-9:

Should a dispositive motion be filed in this case in response to the Amended Prohibited Practice Complaint on or by **October 28, 2019**:

NOTICE IS HEREBY GIVEN that the Board will conduct a hearing on the dispositive motions on the date listed below and in the Schedule in this document.

DATE AND TIME: Tuesday, November 5, 2019 at 9:00 a.m.

LOCATION: Hawai‘i Labor Relations Board Hearing Room
830 Punchbowl Street – Room 434
Honolulu, Hawai‘i 96813

(5) NOTICE OF THE HEARING ON THE MERITS

NOTICE IS HEREBY GIVEN, pursuant to HRS §§ 377-9, 89-5(i)(3), (4), (5), and 89-14, and HAR §§ 12-42-46 and 12-42-49 that the Board will conduct an HOM on the instant Complaint at the place, time and date listed below and in the Schedule set forth below. The purpose of the HOM is to receive evidence and arguments on whether Respondent(s) committed prohibited practices as alleged by Complainant(s).

DATE AND TIME: Thursday, November 7, 2019 at 9:00 a.m.

LOCATION: Hawai‘i Labor Relations Board Hearing Room
830 Punchbowl Street – Room 434
Honolulu, Hawai‘i 96813

All parties have the right to appear at the Hearing on the Merits in person and to be represented by counsel or any other authorized person. **All parties, representatives, and witnesses must appear in person at the hearing on the merits.** Auxiliary aids and services are available upon request to the parties and representatives with disabilities. For TTY, dial 711, then ask for (808) 586-8616, the Hawai‘i Labor Relations Board, within seven (7) days prior to a Board proceeding. For any other accommodation, please call the Board at (808) 586-8616.

(6) SCHEDULE OF HEARINGS, CONFERENCES, AND DEADLINES

DATES AND DEADLINES

DATE

TIME

Witness List; Subpoena Deadline

11/25/19

This deadline shall apply to any and all witnesses expected to be called in the cases in chief in response to the amended prohibited practice complaint and are not required to include any witnesses called prior to this deadline date.

The witness lists shall include, in the interest of judicial economy, a brief but meaningful summary of the nature of the testimony expected, and the order in which the witnesses are expected to be called upon, subject to the witness' availability. The summary for each witness shall include sufficient information for the Board to determine whether the testimony will be irrelevant, immaterial, or unduly repetitious to any other witness testimony; see HRS § 91-10(1).

If a party intends to file a request for a subpoena for a witness, such request shall be concurrently filed with the witness list, and a notation that a request is being made shall be included in the witness list.

Exhibit List; Exchange of Exhibits

11/25/19

This deadline shall apply to any and all new exhibits expected to be used in the cases in chief in response to the amended prohibited practice complaint and are not required to include any exhibits presented prior to this deadline date.

The exhibit lists shall include copies of the proposed exhibits. The parties are encouraged to use the File & ServeXpress eFiling system to file the exhibits before or by 4:30 p.m. (HST) on the deadline day. A party's exhibits or Joint exhibits shall be combined and filed in a searchable portable document format (PDF) not exceeding 10 megabytes with each exhibit bookmarked and bates-stamped at the top right corner. Alternatively, a party may file exhibits in person or by mail to

the Board; the date of receipt by the Board shall be deemed the date of filing.

If a party intends to file a request for a subpoena duces tecum for any of its exhibits, such request shall be concurrently filed with the Pretrial Statement, and a notation that a request is being made shall be listed in the exhibit list.

The Complainant shall identify its exhibits using alphabetical letters (A, B, C, D, etc.). Employer Respondent(s) shall identify its exhibits using numerical designations preceded by E (e.g., E-1, E-2, E-3, etc.).

If there are any duplicative exhibits, the parties shall designate them as Joint Exhibits, the parties shall designate one party to file these exhibits, and the Exhibits shall be marked with numerical designations preceded by J (e.g., J-1, J-2, J-3, etc.).

Hearing on Dispositive Motions

11/5/19

9:00 a.m.

Hearing on the Merits

11/7/19

9:00 a.m.

All submissions shall be filed on or before 4:30 p.m. on the deadline date.

DATED: Honolulu, Hawai'i, October 24, 2019.

HAWAI'I LABOR RELATIONS BOARD




MARCUS R. OSHIRO, Chair


SESNITA A.D. MOEPONO, Member


J.N. MUSTO, Member

Enclosure: AMENDED PROHIBITED PRACTICE COMPLAINT

Copies sent to:

Ted H.S. Hong, Esq.

Herbert R. Takahashi, Esq.

Henry S. Kim, Deputy Attorney General

TAUM v. UPW AND PSD
CASE NO(S). 17-CU-10-357; 17-CE-10-906
PRETRIAL ORDER AND NOTICES
ORDER NO. 3572



EFiled: Oct 24 2019 09:45AM HAST
Transaction ID 64350050
Case No. 17-CU-10-357, 17-CE-10-906

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

FORM HLRB-4
AMENDED PROHIBITED PRACTICE COMPLAINT

INSTRUCTIONS. Submit the original¹ of this Complaint to the Hawaii Labor Relations Board, 830 Punchbowl Street, Room 434, Honolulu, Hawaii 96813. If more space is required for any item, attach additional sheets, numbering each item accordingly.

1. The Complainant alleges that the following circumstances exist and requests that the Hawaii Labor Relations Board proceed pursuant to Hawaii Revised Statutes Sections 89-13 and 89-14 and its Administrative Rules, to determine whether there has been any violation of the Hawaii Revised Statutes, Chapter 89.
-

2. COMPLAINANT Please select one that describes the Complainant:

☒ Public Employee ☐ Public Employer ☐ Public Union (public employee organization)

- a. Name, address and telephone number.

Jonathan Taum
215 Kapualani Street
Hilo, Hawaii 96720
c/o 808.933.1919

-
- b. Name, address, e-mail address and telephone number of the principal representative, if any, to whom correspondence is to be directed.

Ted H. S. Hong, Esq.
P. O. Box 4217
Hilo, Hawaii 96720
808.933.1919
ted@tedhonglaw.com

¹ Notwithstanding Board rule 12-42-42(b), the Board only requires the original of the complaint.

3. RESPONDENT Please select one that describes the Respondent:

☐ Public Employee ☒ Public Employer ☒ Public Union (public employee organization)

a. Name, address and telephone number.

United Public Workers, AFSCME,
Local 646, AFL-CIO
1426 N. School Street
Honolulu, Hawaii 96817-1914
808.847.2631

Department of Public Safety
919 Ala Moana Blvd., Rm. 400
Honolulu, Hawaii 96814
808.587.1288

b. Name, address and telephone number of the principal representative, if any, to whom correspondence is to be directed.

UPW: Herbert R. Takahashi, Esq., 345 Queen Street, Rm. 506, Honolulu,
Hawaii 96813; 808.526.3003

PSD: Henry S. Kim, Esq., 235 S. Beretania Street, 15th Floor, Honolulu, Hawaii
96813; 808.587.2900

4. Indicate the appropriate bargaining unit(s) of employee(s) involved.

BU-10

5. ALLEGATIONS

The Complainant alleges that the above-named respondent(s) has (have) engaged in or is (are) engaging in a prohibited practice or practices within the meaning of the Hawaii Revised Statutes, Section 89-13. (Specify in detail the particular alleged violation, including the subsection or subsections of the Hawaii Revised Statutes, Section 89-13, alleged to have been violated, together with a complete statement of the facts supporting the complaint, including specific facts as to names, dates, times, and places involved in the acts alleged to be improper.)

See, Attachment "1."

6. Provide a clear and concise statement of any other relevant facts.

See, Attachment "1."

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

DECLARATION IN LIEU OF AFFIDAVIT

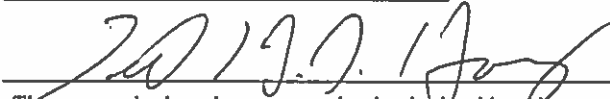
(If the Complainant is self-represented, then the Complainant must sign this Declaration).

Please select one:

- ☐ the Complainant
☒ the Complainant's principle representative
☐ the person described below

I, Ted H. S. Hong,
do declare under penalty of law that the foregoing is true and correct.

Date: October 15, 2019



The person signing above agrees that by signing his or her name in the above space with a "/s/ first, middle, last names" is deemed to be treated like an original signature.

ted@tedhonglaw.com

Signor's email address

If you are not the Complainant or listed as the principle representative in #2(b) and you are signing above, then please complete the contact information below.

Your address:

Ted H. S. Hong, Esq.

P.O. Box 4217

Hilo, Hawaii 96720

Your phone number: 808.933.1919

Your relationship to the Complainant:

Attorney

If the Complainant or principal representative is registered with File and ServeXpress (FSX), then you may proceed to electronically file this complaint.

If the Complainant or the principal representative is not registered with FSX and would like to electronically file this complaint through FSX, then complete the Board Agreement to E-File, FORM HLRB-25. (Form HLRB-25 is on the HLRB Website at labor.hawaii.gov/hlrb/forms.) Email the completed form to the Board at dlir.laborboard@hawaii.gov.

ATTACHMENT "1."

5. ALLEGATIONS

The Complainant alleges that the above-named respondent(s) has (have) engaged in or is (are) engaging in a prohibited practice or practices within the meaning of the Hawaii Revised Statutes, Section 89-13. (Specify in detail the particular alleged violation, including the subsection or subsections of the Hawaii Revised Statutes, Section 89-13, alleged to have been violated, together with a complete statement of the facts supporting the complaint, including specific facts as to names, dates, times, and places involved in the acts alleged to be improper.)

A. Factual Background:

(1) At all times relevant herein, the Complainant was employed by the Respondent Public Safety Department (hereinafter referred to as "PSD.")

(2) At all times relevant herein, the Complainant was employed as an Adult Corrections Officer IV/CO-08, Step B, in Hilo, Hawaii at the Hawaii Community Correctional Center.

(3) On or about November 29, 2016, PSD notified the Complainant that he was being discharged as of December 23, 2016 over an incident that occurred on or about June 15, 2015. See, Exhibit "1," pages 001-007, attached hereto.

(4) On or about January 4, 2017, the Complainant received notice from PSD, that any evidence he presented at his Pre-Discharge Hearing on December 20, 2016, was insufficient and his discharge was sustained. See, Exhibit "1," pages 008-009, attached hereto.

(5) On or about January 5, 2017, the Respondent United Public Workers, AFSCME Local 646, AFL-CIO (hereinafter referred to as "UPW") filed a grievance with the Respondent PSD on the Complainant's behalf. See, Exhibit "1," page 011, attached hereto.

(6) On or about January 24, 2017, the Complainant participated in a Step 1 hearing by telephone. See, Exhibit "1," page 009, attached hereto.

(7) On or about January 31, 2017, the Respondent PSD notified the Respondent UPW that its Step 1 grievance filed on behalf of the Complainant was denied. See, Exhibit “1,” page 010, attached hereto.

(8) On or about May 15, 2017, the Respondent UPW submitted its formal notice to arbitrate the Complainant’s grievance. See, Exhibit “1,” page 012 attached hereto.

(9) Respondent UPW notified all parties, including the Complainant, that Wendy Campaniano, Esq., would represent the Respondent UPW in the arbitration. Id.

(10) From May 15, 2017, the Complainant consulted, disclosed, relied on and assisted the Respondent UPW’s attorney, Wendy Campaniano, Esq., in his pending arbitration hearing.

(11) Wendy Campaniano, Esq., held confidential and privileged communications with the Complainant, in email, documents and verbal discussions.

(12) Wendy Campaniano, Esq., provided legal advice to the Complainant and an attorney-client relationship existed with the Complainant.

(13) On or about July 3, 2017, Ms. Campaniano, informed the Complainant, that an Arbitrator had been selected by the parties and provided him the dates, times and locations of the three (3) day arbitration. See, Exhibit “1,” pages 014-015, attached hereto.

(14) On September 13, 2017, Ms. Campaniano advised the Complainant of new hearing dates. See, Exhibit “1,” page 016, attached hereto.

(15) By September 13, 2017, the Complainant had been communicating with Ms. Campaniano, including discussing previously undisclosed videos and reports of the incident in question to support his defense.

(16) During the course of her legal representation, Ms. Campaniano recommended to the

Complainant that he should settle the grievance/arbitration matter with Respondent PSD, by resigning his position.

(17) The Complainant considered the recommendation but rejected it, in part, because of his personal financial condition.

(18) He also rejected any settlement that included resignation and informed Ms. Campaniano that there were unique and exclusive defenses and facts, including the video recording that vindicated him from any responsibility for the alleged prisoner assault.

(19) He urged Ms. Campaniano to look carefully at the evidence which would support his reinstatement.

(20) Ms. Campaniano expressed her unwillingness to review any additional evidence or to proceed with the arbitration based on her reluctance to prepare an adequate defense because of the difficulty of the underlying facts of the case.

(21) On or about September 25, 2017, the Complainant received a letter from Dayton M. Nakanelua, withdrawing the request for arbitration, due in part to "the evidence presented." See, Exhibit "1," page 017, attached hereto.

(22) On or about October 2, 2017, Ms. Campaniano caused to be sent a letter to the Complainant informing him that based on Mr. Nakanelua's letter dated September 25, 2017, the arbitration hearing was cancelled and her role as legal counsel was terminated. See, Exhibit "1," page 018, attached hereto.

(23) At no time did anyone, including Ms. Campaniano, inform or advise the Complainant that the UPW would not pursue the arbitration on his behalf until he received Mr. Nakanelua's letter dated September 25, 2017.

(24) If at any time, anyone from the UPW told the Complainant that they were not going to take his case to arbitration or that they wouldn't represent him in any arbitration proceeding, he would have been able to find someone to help or legally represent him.

(25) By the time the Complainant received Mr. Nakanelua's letter, dated September 25, 2017, that the UPW was suddenly withdrawing from his arbitration, he had no other options, including trying to settle his underlying termination or finding his own attorney to represent him in the underlying case because all the deadlines in the collective bargaining agreement had expired.

(26) The Complainant was unfairly prejudiced in his employment and rights under the applicable collective bargaining agreement and Chapter 89, HRS, by the UPW and the UPW's attorney, because they failed in their duty to represent the Complainant fairly or competently in his grievance/arbitration, including but not limited to:

- (a) discriminating against the Complainant based on a long standing vendetta between Mr. Nakanelua and the Complainant;

- (b) informing the Complainant that the UPW was fearful of arbitrating his discharge;

- (c) informing the Complainant that the UPW would pursue his arbitration if he refused to agree to Ms. Campaniano's proposed settlement agreement of resignation.

- (d) failing to question the qualifications of J. Marte Martinez and her opinions regarding training and the use of force, despite actual knowledge that she did not have the academic qualifications and professional qualifications required

by her position in PSD.

(B) Prohibited Practice Complaint Against Respondent PSD:

(27) The Complainant incorporates by reference paragraphs 1-26 above.

(28) At all times relevant herein, Respondent DEPARTMENT OF PUBLIC SAFETY, is an “employer” or “public employer” as defined in Section 89-2, “HRS”.

(29) At all times relevant herein, Respondent PSD, was a party to the collective bargaining agreement with the Respondent United Public Workers, AFSCME Local 646, AFL-CIO.

(30) At all times relevant herein, PSD was aware that the inmate who had struggled against the ACOs, had previously tested positive for ingesting illegal drugs.

(31) At all times relevant herein, PSD was aware that the inmate who had attacked the ACOs behaved erratically and was potentially violent, even prior to the attack.

(32) At all times relevant herein, PSD lacked “just and proper cause” to terminate the Complainant.

(33) At all times relevant herein, PSD violated Section 1, 11, 14, 15, 58, 61 and 65 of the Unit 10 Agreement, because PSD discharged the Complainant without due process and “just and proper cause” by refusing to consider all the evidence presented at the December 20, 2017 Pre-Discharge Hearing and intentionally withholding evidence (videos, reports and statements) that would exculpate the Complainant. See, Exhibit “2,” attached hereto.

(34) At all times relevant herein, PSD conspired with the UPW, specifically Mr. Nakanelua, to suppress the Complainant’s exercise of his employment rights under the applicable collective bargaining agreement and Chapter 89, HRS, including but not limited to shielding the

Director of PSD from further bad publicity, keep his position and instead, sacrifice the careers and lives of the Complainant and other co-workers.

(36) On January 8-9, 2019, PSD offered J. MARTE MARTINEZ (Ms. Martinez) as a witness to testify regarding the facts and circumstances in this case and the issues raised in the Complaint. Ms. Martinez authored a Use of Force Review for PSD (Martinez Report), based on a video of the inmate takedown that, among other things, led to Complainant's discharge. The letter from PSD discharging Complainant specifically referenced the Martinez Report. Several subsequent PSD witnesses referenced the Martinez Report as a document that they reviewed and relied on in the course of Complainant's disciplinary and grievance proceedings.

(37) Among other things, on January 8, 2019, Ms. Martinez presented her qualifications to perform a Use of Force Review to the Board. These qualifications included, among other things, that Ms. Martinez graduated from Southern Oregon State College in "'92, criminal justice, criminology"; that Ms. Martinez has been certified as an instructor since 1994 in "three states and the federal government"; and that she "hold[s] 33 certificates as far as an instructor."

(38) On April 11, 2019, HAWAII NEWS NOW (HNN) issued a story, entitled "Administrator in charge of [PSD] training programs accused of lying on her resume." The story, among other things, raised questions about Ms. Martinez's education and experience. Those questions raised include questions about qualifications that Ms. Martinez presented to the Board on January 8, 2019.

(39) On April 18, 2019, Complainant requested and the Board issued a subpoena duces tecum to PSD for "[a]ny and all investigations conducted by the Department of Public Safety concerning Ms. J. Marte Martinez's resume, qualifications and credentials that were submitted to

anyone in the Legislature in 2019” (Subpoena to PSD). Complainant served the Subpoena on PSD on May 7, 2019.

(40) After an in-camera review of the documents produced by PSD in response to the Subpoena to PSD, Complainant withdrew the Subpoena to PSD on July 2, 2019.

(41) On June 25, 2019, Complainant requested and the Board issued a subpoena to Ms. Martinez.

(42) On July 25, 2019, Complainant filed a Declaration of Process Server, which stated, among other things, that Ms. Martinez could not be served because she was not at her office and would not be back at her office for at least a week.

(43) On September 10, 2019, the Board issued Board Order No. 3557, for Department of Public Safety, State of Hawai‘i to Produce J. Marte Martinez and for United Public Workers, AFSCME, Local 646, AFL-CIO to Produce Dayton Nakanelua at a Hearing on the Merits for the Purpose of Addressing Board Questions. Order No. 3557 also noticed a further hearing on the merits (HOM) for September 25, 2019.

(44) On September 19, 2019, the Board issued Board Order No. 3561, for Department of Public Safety, State of Hawai‘i, to Produce Additional Employment Records for J. Marte Martinez for the Purpose of Addressing Board Questions.

(45) On September 25, 2019, the Board held an HOM. At the HOM, PSD produced documents identified as Board Exhibit 3, which were the same documents previously produced in response to the Subpoena to PSD, and Ms. Martinez did not appear. UPW produced Dayton Nakanelua (Nakanelua) who testified in response to Order No. 3557. Mr. Nakanelua testified that he became aware of the allegations regarding Ms. Martinez’s qualifications during the 2019

Hawai'i Legislative Session during the confirmation hearing on the appointment of PSD Director Nolan Espinda (Espinda).

(46) The Board scheduled a continued hearing date of October 3, 2019 and ordered PSD to produce additional documents regarding Ms. Martinez, an order memorialized by Board Order No. 3563, Clarifying that Order No. 3561 Ordering the Department of Public Safety, State of Hawai'i, to Produce Additional Employment Records for J. Marte Martinez for the Purpose of Addressing Board Questions Shall Include but is not Limited to the Production of Personnel Records and Training Certification Records.

(47) On September 26, 2019, based on PSD's actions at the HOM on September 25, 2019, Complainant filed Complainant's Motion for Order to Show Cause Why Respondent Department of Public Safety, Hawaii Community Correctional Center, State of Hawaii, Should Not be Held in Contempt of the Board's Order #3557 Filed on September 10, 2019 and Order #3561 Filed on September 19, 2019, and Imposition of Sanctions (Motion for Order to Show Cause). UPW filed an Opposition to the Motion for Order to Show Cause on September 30, 2019, and PSD filed an Opposition to the Motion for Order to Show Cause on October 1, 2019.

(48) On October 1, 2019, PSD filed Respondent State of Hawaii, Department of Public Safety's Motion to Continue Hearing Scheduled for October 3, 2019 Until the Court Issues a Decision on Respondent's Appeal (Motion to Continue).

(49) On October 3, 2019, the Board held an HOM in the above-entitled case. PSD did not produce any additional records in response to Board Order Nos. 3557, 3561, or 3563. At the October 3, 2019 HOM, among other things, the Board took judicial notice of "any video or record from Hawaii News Now and the Hawai'i State Senate public record regarding the issue of

Ms. Martinez's educational and training background." The Board took this judicial notice solely as an indication of what information was in the public record at the time. *Von Saher v. Norton Simon Museum of Art at Pasadena*, 578 F.3d 1016 (9th Cir. 2010).

(50) On October 3, 2019, the Board held an HOM in the above-entitled case. PSD did not produce any additional records in response to Board Order Nos. 3557, 3561, or 3563. At the HOM, the Board further took testimony from Senator Clarence Nishihara, who is currently Chair of the Committee on Public Safety. Senator Nishihara testified, among other things, that there were allegations raised during the 2019 Hawai'i Legislative Session prior to and during the confirmation hearing on the appointment of Espinda, regarding Ms. Martinez's employment, educational, and experience background. Prior to concluding the HOM, the Board made oral findings and orders, which were incorporated into Order No. 3566.

(51) On October 7, 2019, the Board adopted and filed its Amended Minute Order Memorializing the Board's Oral Order at the October 3, 2019 Hearing on the Merits, Order No. 3566A, and ruled on procedural issues and motions.

(52) Order No. 3566, among other things, provided that PSD is no longer required to produce documents, nor is Ms. Martinez required to appear at a future HOM. Additionally, in Order No. 3566, the Board disqualified Ms. Martinez as an expert witness in this case and stated that the Board will draw an adverse inference from PSD's refusal to produce documents to qualify Ms. Martinez as an expert witness; that Ms. Martinez's testimony, opinions, and analysis will be given the weight that they deserve based on the foregoing and the Board's determination regarding her credibility; and that the Board will weigh any of PSD's actions in this case that relied on her opinions and analysis in light of the weight given to her testimony, opinions, and

analysis.

(53) At all times relevant herein, Respondent PSD violated Sec. 89-10.8, and 89-13(a)(1), (6), (7) and (8), HRS, by relying on an investigation report as a basis for Complainant's discharge from his PSD position, which was incomplete and based on a Use of Force Report rendered by Ms. Martinez, who was not shown to be qualified for the position that she held at PSD at the time she rendered that report; and by continuing to refuse to disclose and substantiate Ms. Martinez's qualifications for that position to the Complainant and his Union UPW during Complainant's disciplinary proceedings and grievance procedure and the prohibited practice case

(C) Prohibited Practice Complaint Against Respondent UPW:

(54) The Complainant incorporates by reference paragraphs 1-53 above.

(55) At all times relevant herein, Respondent UPW, is an "Employee organization" pursuant to Section 89-2, HRS.

(56) At all times relevant herein, Respondent UPW, was a party to the BU 10 collective bargaining agreement with the State of Hawaii, which included PSD.

(57) At all times relevant herein, Mr. Nakanelua the State Director for the Respondent UPW was aware that the Complainant had been terminated and was pursuing reinstatement under the BU 10 collective bargaining agreement.

(58) At all times relevant herein, Mr. Nakanelua had a personal grudge or vendetta against the Complainant and used his influence to ensure the Complainant was discharged from PSD and would no longer be a member of the UPW.

(59) That at all times relevant, Mr. Nakanelua used his influence and exerted his power as Respondent UPW's State Director, to suppress the Complainant's exercise of his employment

rights under the applicable collective bargaining agreement and Chapter 89, HRS.

(60) On or about October 23, 2007, the Complainant filed an internal complaint against Mr. Nakanelua under the applicable AFSCME International Constitution. See, Exhibit “3,” attached hereto.

(61) On or about April 26, 2008, a trial was held by the UPW. See, Exhibit “4,” attached hereto.

(62) On or about May 7, 2008, the Complainant was given a copy of the Findings, Decision and Orders of the UPW Trial Body Concerning Jonathan Taum’s Motion to Withdraw the Charges Against UPW State Director, dated May 5, 2008. Id.

(63) The Complainant was ordered by Mr. Nakanelua’s allies serving on the Union’s Trial Body to submit a written apology to Mr. Nakanelua which would be published in the statewide Union newsletter, “Malama Pono.” Id.

(64) The UPW trial was a sham or “kangaroo court” in which the Complainant was put on trial and the UPW Trial Body members were told what to do by Mr. Nakanelua’s legal representative. See, Exhibit “5,” attached hereto.

(65) On or about May/June/July of 2008, the UPW published the Complainant’s apology. See, Exhibit “6,” attached hereto.

(66) On or about August 8, 2019, Mr. Nakanelua, was found guilty of violating the UPW Bill of Rights, proving the Complainant was right but was condemned for by the UPW Trial Body on May 7, 2008 (Exhibit “4.”). See, Exhibit “7,” attached hereto.

(67) At all times relevant herein, the Respondent UPW was aware that the PSD lacked “just and proper cause” to terminate the Complainant, as set out in Sec. 11 of the applicable

collective bargaining agreement. See, Exhibit “2,” attached hereto.

(68) At all times relevant herein, the Respondent UPW was aware that the charges against the Complainant involved the allegation of violence against an inmate and that the Respondent PSD had deliberately and intentionally withheld evidence that would have exonerated the Complainant and refused to pursue Respondent PSD and compel it to turn the evidence over as part of the grievance/arbitration process.

(69) At all times relevant herein, Mr. Nakanelua as the State Director for the Respondent UPW, knew that the underlying incident of violence against an inmate was serious, high profile in the local media and a difficult case in terms of evidence and the highly sensitive subject matter, would require experienced legal counsel to assist the Complainant in his grievance and arbitration.

(70) At all times relevant herein, Mr. Nakanelua as the State Director for the Respondent UPW, approved the selection of Ms. Wendy Campaniano, Esq., to represent the Respondent UPW in the Complainant’s arbitration.

(71) At all times relevant herein, the Respondent UPW, including but not limited to Mr. Nakanelua, was privy to the Complainant’s confidential communications with Ms. Campaniano.

(72) At all times relevant, Mr. Nakanelua as the State Director for the Respondent UPW, knew that Ms. Campaniano did not want to be assigned to or provide legal representation in the Complainant’s case because of the subject matter.

(73) At all times relevant, Mr. Nakanelua as the State Director for the Respondent UPW, was aware of and approved a settlement agreement with Respondent PSD, to have the Complainant resign his employment.

(74) At all times relevant, Mr. Nakanelua as the State Director for the Respondent UPW, and Ms. Campaniano failed to inform the Complainant, that Ms. Campaniano was legally and contractually, representing the Respondent UPW and not the Complainant.

(75) At all times relevant, Mr. Nakanelua as the State Director for the Respondent UPW, and Ms. Campaniano failed to advise the Complainant that he could hire his own attorney to assist him in any of the legal matters arising from his termination.

(76) At all times relevant, Mr. Nakanelua as the State Director for the Respondent UPW, and Ms. Campaniano failed to inform the Complainant that they had been conspiring to have the Complainant resign his employment with the State of Hawaii and stop being a UPW member.

(77) At all times relevant herein, the Respondent UPW was aware that the Complainant was relying on the UPW's representations that his termination was made without "just and proper cause" and that the UPW submitted his case to and pursue arbitration.

(78) At all times relevant, Mr. Nakanelua as the State Director for the Respondent UPW, and Ms. Campaniano did not want to arbitrate the Complainant's discharge.

(79) At all times relevant, Mr. Nakanelua as the State Director for the Respondent UPW, was motivated by malice and his hatred for the Complainant and Mr. Nakanelua was determined to do whatever he could to make sure that the Complainant was discharged from service and would no longer be a member of the UPW.

(80) At all times relevant herein, the Respondent UPW, conspired with PSD, based on the personal relationship between Mr. Nakanelua as the State Director for the Respondent UPW, and Mr. Espinda, PSD Director, to suppress the Complainant's exercise of his employment rights under the applicable collective bargaining agreement and Chapter 89, HRS, including but not

limited to arbitrating his grievance/arbitration and then withdrawing the request for arbitration without the Complainant's knowledge, consent or forewarning.

(81) At all times relevant herein, the Respondent UPW, failed to represent the Complainant and/or defend or assert the Complainant's statutory rights and remedies under Chapter 89, HRS, and/or contractual remedies under the applicable BU 10, collective bargaining agreement.

(82) At all times relevant, Mr. Nakanelua as the State Director for the Respondent UPW, and Ms. Campaniano lied and misrepresented the facts and merits of the Complainant's grievance/arbitration to the Complainant in order to pressure him into resigning.

(83) At all times relevant herein, the Complainant detrimentally relied on the deliberate, intentional, and/or fraudulent misrepresentations by the Respondent UPW, including its attorney, Ms. Campaniano.

(84) At all times relevant herein, the Respondent UPW had a legal duty to treat and represent the Complainant in his grievance/arbitration against the Respondent PSD, fairly, competently, honestly and advocate on his behalf to protect the integrity of the BU 10 collective bargaining agreement.

(85) At all times relevant herein, the Respondent UPW violated Sec. 89-13(b)(1), (3), (4) and (5) HRS because the Respondent UPW violated its duty of fair representation and had actual knowledge that J. Marte Martinez did not meet the minimum qualifications for her position and did nothing after learning about her lack of qualifications.

(C) Remedy Sought:

(86) The Complainant incorporates by reference paragraphs 1-85 above.

(87) That the Board find as a matter of law, that:

(A) The Complainant's termination failed to meet the "just and proper cause" standard;

(B) The Respondent PSD violated its duty of fair representation and was required by law to follow the grievance and arbitration procedures in the applicable BU 10 collective bargaining agreement;

(C) That PSD violated HRS §§ 89-10.8, 89-13(a)(1), and 89-13(a)(7) by relying on an investigation report as a basis for Complainant's discharge from his PSD position, which was incomplete and based on a use of force report rendered by Ms. Martinez, who was not shown to be qualified for the position that she held at PSD at the time she rendered that report; and by continuing to refuse to disclose and substantiate Ms. Martinez's qualifications for that position to the Complainant and his Union UPW during Complainant's disciplinary proceedings and grievance procedure and the prohibited practice case.

(D) The Respondent PSD and Respondent UPW, by and through its authorized agents conspired against the Complainant to suppress the Complainant's rights under Chapter 89, HRS, and the applicable BU 10 collective bargaining agreement;

(E) That the Complainant relied on the deliberate, intentional, fraudulent and/or negligent misrepresentations by the Respondent UPW, by and through its attorney, Ms. Campaniano, concerning the processing of his grievance/arbitration;

(F) That the Respondent UPW, by and through its State Director, Dayton

Nakanelua and its attorney, Ms. Campaniano, deliberately, intentionally, fraudulently and/or negligently misrepresented the fact and evidence in the Complainant's grievance so that the Complainant would be forced to resign from service.

(G) That the Complainant detrimentally relied on the deliberate, intentional, fraudulent and/or negligent misrepresentations by the Respondent UPW, by and through its attorney, Ms. Campaniano about the nature of the evidence in processing of the Complainant's grievance/arbitration against Respondent PSD;

(H) That Respondent PSD violated Sec. 89-10.8, 89-13(a)(1), (6), (7,) and (8), HRS because it lacked just and proper cause to terminate the Complainant;

(I) That the Respondent UPW violated Sec. 89-13(b)(1), (3), (4) and (5) HRS because the Respondent UPW breached its duty of fair representation;

(J) That the Respondent UPW breached its common law duty of fair representation;

(K) That the Complainant be reinstated immediately, without loss in seniority, fringe benefits and back pay from the date of his termination to the entry of the Order in this case;

(L) That the Complainant's be awarded against Respondents PSD and UPW general and special damages in amounts to be shown at the hearing;

(M) Award Complainant compensatory damages against the Respondents;

(N) Award Complainant his costs and attorney's fees;

(O) Award Complainant any pre and post judgment interest;

(P) Grant such other relief as it may deem just and proper.

DAVID Y. IGE
GOVERNOR



STATE OF HAWAII
DEPARTMENT OF PUBLIC SAFETY
919 Ala Moana Boulevard, 4th Floor
Honolulu, Hawaii 96814

NOLAN P. ESPINDA
DIRECTOR

Cathy Ross
Deputy Director
Administration

Jodie F. Maesaka-Hirata
Deputy Director
Corrections

Shawn H. Tsuha
Deputy Director
Law Enforcement

No. ADM 3921

November 29, 2016

HAND DELIVERED

CONFIDENTIAL

Jonathan Taum
Adult Corrections Officer IV
Hawaii Community Correctional Center

Dear Mr. Taum:

We are discharging you from employment as an Adult Corrections Officer IV, Position No. 38662 (Permanent Appointment) with the State of Hawaii, Department of Public Safety, Hawaii Community Correctional Center. The effective date of your discharge will be the close of business Friday, December 23, 2016.

You are removed from service and on leave with full pay until your date of discharge. You will immediately turn in all items issued to you by the Department or any of its subdivisions that identify you as an employee and/or were required for the performance of your duty. These items include all keys, identification cards, uniforms, weapons, and tools, as applicable.

This discharge action is being taken because you were found to be in violation of the charges in the Standards of Conduct as specified below:

Article III, Section II, Professional Conduct and Responsibilities, E5. **General Responsibilities** - Correctional employees shall at all times take appropriate action to observe constitutional guarantees.

Article III, Section II, Professional Conduct and Responsibilities, E7. **General Responsibilities** - Correctional employees shall at all times take appropriate action to identify potentially dangerous and/or serious security situations or problems.

Article III, Section II, Professional Conduct and Responsibilities, E10. **General Responsibilities** - Correctional employees shall at all times take appropriate action to enforce all Federal and statutory law violations as well as departmental and branch Rules,

EXHIBIT 1

TAUM000001

Directives, Policies and Procedures, and these Standards of Conduct and report any violations thereof.

Article III, Section II, Professional Conduct and Responsibilities, **H. Performance of Duty** - Corrections Officers and employees shall perform their duties as required or directed by law, departmental rules or policies, or by order of a supervisor. All lawful duties required by competent authority shall be performed promptly as directed, notwithstanding the general assignment of duties and responsibilities.

Article III, Section II, Professional Conduct and Responsibilities, **I. Obedience to Laws and Regulations** - Corrections Officers and employees shall observe and obey all laws, Administrative Rules, Policies and Procedures, and Standards of Conduct of the Department.

Article III, Section III, Rules, **A. Class A Rules, A5 - Mistreatment of an Inmate** - Corrections Officers and employees shall not mistreat an inmate.

The Factual Findings are:

On June 16, 2015, in your capacity as the Security Sergeant (supervisor), you failed to manage a Use of Force incident, during the escort of inmate Chawn Kaili, to the Punahale Complex for rehousing. This resulted in injury to inmate Kaili.

Supporting Facts and Conclusion:

1. On June 16, 2015, you served as the Security Sergeant (supervisor) on First Watch (2200-0600 hours). As the Security Sergeant, you are responsible for all inmate movements within the facility.
2. At approximately 0125 hours, Frank Baker, ACO III, notified you that inmate Chawn Kaili was acting strangely, and asking questions about being released. You stated that you informed Watch Commander Lieutenant John-Harry Waikiki of inmate Kaili's behavior. The decision was made to rehouse the inmate from the Waianuenue housing unit to the Punahale Complex. You stated that at this time, you did not have knowledge that inmate Kaili was "acting high" or under the influence of drugs.
3. According to Lt. John-Harry Waikiki, he stated that he was not aware and he never authorized you to deviate from procedures to move inmate Kaili without restraints to the Punahale Complex. According to ACO Craig Pinkney, he stated that he informed you that inmate Kaili appeared high or under the influence of drugs, prior to the inmate's move.
4. You stated that you had a rapport with inmate Kaili and that the inmate was not a "problem" inmate. You stated that Lieutenant Waikiki made the final decision to

move inmate Kaili from Waianuenue housing to the Punahele Complex with no restraints. This is not substantiated by Lt. Waikiki.

5. You directed ACOs Jason Tagaloa and Pinkney to escort inmate Chawn Kaili from the Waianuenue housing to the Punahele Complex. You stated that you and ACO Jordan DeMattos met ACOs Pinkney and Tagaloa at the Waianuenue Recreation Yard to assist with the movement to the Punahele Complex.
6. Upon entering the Waianuenue Recreation Yard, you stated that ACO Tagaloa had control of inmate Kaili and saw inmate Kaili began to crouch and grunt, and push back into ACO Tagaloa. You stated that you directed ACO Tagaloa to take the inmate down.
7. You stated that during the take down, inmate Kaili became resistive and was kicking and moving his arms around. You stated that inmate Kaili was non-compliant to verbal directives such as: "stop resisting," "give us your hands," and "stop fighting."
8. Based on the video footage of the incident, inmate Kaili was not kicking or using his hands prior to his take down to the ground.
9. You stated that inmate Kaili appeared to be possessed and that you were pleading with him to comply, as this was not typical behavior of inmate Kaili.
10. In an attempt to gain control of inmate Kaili, you stated that you directed your subordinates to, "use your strikes." You stated that this command was in reference to only the approved strikes taught in BCT. You stated that you never gave a verbal command to your subordinates to, "kick him in the shoulder." The video does not indicate that you attempted to stop the inappropriate conduct of your subordinates.
11. You stated that you attempted to gain control of inmate Kaili's legs during the takedown, however was unsuccessful. You stated that inmate Kaili was exceptionally strong, and that you were concerned, as ACOs Tagaloa, Pinkney and DeMattos, who were larger than you in size, were also unsuccessful in gaining control of the inmate.
12. You stated that during the incident, your focus was split on 1) inmate Kaili's strength; 2) the inability by your staff to control him; and 3) the safety of the ACOs in the Waianuenue housing unit, as inmates were yelling and making threatening remarks to staff after the take down.
13. You stated that you did not see any of the ACOs involved in the take down kick or punch inmate Kaili in the face or head, or utilize any unapproved strikes to the inmate. This is contrary to the evidence in the video.

14. Based on the video footage, inmate Kaili was not kicking or using his hands prior to his take down to the ground. The video footage also showed that ACOs DeMattos, Pinkney and Tagaloa, delivered approximately 15 strikes and kicks to the inmate's face.
15. Upon restraining inmate Kaili, he was housed in the Punahale Complex at approximately 0132 hours. The Watch Commander Lt. Waikiki was informed of the incident and the Use of Force forms were submitted by the staff, who used and observed the use of force.
16. You stated that once the ACOs were in control of inmate Kaili, you went to the Waianuenue housing unit to address the inmates and quiet them down. You stated that you then went back to the Recreation Yard, it was empty. You stated that you noticed blood on the ground and was shocked, as you did not see your staff use any force that would have resulted in "much" injury.
17. You stated that you then went to the Punahale Complex, Cell #7, to see inmate Kaili. You stated that inmate Kaili was still in an aggressive state, and he attempted to attack you. At this time, you stated that the only visible injury that you observed on the inmate was a bloody nose.
18. You stated that you left the area, and came back a second time, when one of your subordinate staff members informed you that inmate Kaili was trying to tie a sheet around his neck. You stated that at this time, you noticed inmate Kaili's nose actively dripping with blood, and blood on the wall and on the sink.
19. You stated that inmate Kaili appeared to be paranoid, and did not want to seek medical attention. You stated that Lt. Waikiki contacted Sergeant Samuel Kao and ACO Bryan Watanabe, to extract inmate Kaili from his cell to take him to the hospital.
20. According to your statement, you attempted to speak with inmate Kaili to explain why he needed medical attention. You stated that after speaking with inmate Kaili for approximately 2 hours and 45 minutes, you were able to get inmate Kaili out of the cell without force.
21. At approximately 0445 hours (three hours after the incident), inmate Kaili was sent to the Hilo Medical Center for his injuries, as directed by Lt. Waikiki.
22. According to the medical records, inmate Kaili sustained multiple abrasions to his entire face, two swollen and bruised (black and blue) eyes, and a fractured jaw.

23. You stated that the injuries inmate Kaili sustained in the medical record were not consistent with the visible injuries you noticed when rehousing the inmate to Punahale (bloody nose).
24. Lt. Waikiki wrote in his report that, "at 0132 hours, I could tell immediately that inmate Kaili, C. had sustained some type of injury due to the blood that was all over his face." "Inmate Kaili, C. sustained numerous scratches and abrasions to his face and body."
25. Your account of the visible injuries inmate Kaili sustained is inconsistent with the medical record and Lt. Waikiki's statement.
26. You stated that the inmate could have sustained the additional injuries when he was rehoused in Cell #7 of the Punahale Complex, prior to being treated at the Hilo Medical Center. You stated that the investigation report included a statement by Andy Ahuna-Alofaituli, ACO III, indicating that inmate Kaili jumped off the bunk and fell, hitting his jaw and face.
27. According to Dr. Michael Hegmann, PSD's Medical Director, he stated that the injuries sustained by inmate Kaili could be compatible with ACO Ahuna-Alofaituli's report, but it was also compatible with his review of the video and conduct of staff, while in the Waianuenue Recreation Yard.
28. Dr. Hegmann indicated that the video shows a stained or darkened area on the ground near the inmate's head, while at the recreation yard. Dr. Hegmann determined that the darkened area was blood, which was not there prior to the takedown. Dr. Hegmann concluded that the inmate was bleeding as a result of physical contact by staff.
29. Although ACO Ahuna-Alofaituli submitted a report detailing the events occurring with inmate Kaili in Cell #7, ACO Ahuna-Alofaituli failed to document the actions and possible injuries inmate Kaili sustained within the cell on the official chronological Punahale Complex logbook. It should be noted that at 0230 hours, the logbook only reflected that, "Frequent checks of Inmate Kaili, C." were made "due to injuries while resisting to be rehoused to Punahale."
30. The video footage of the incident was reviewed by Marte Martinez, Training and Staff Development (TSD) Instructor. According to Ms. Martinez, your subordinates delivered approximately 45 strikes and kicks to inmate Kaili during the incident. Ms. Martinez stated that these strikes consisted of both authorized and unauthorized strikes. Ms. Martinez stated that although approved strikes such as the hammer fist and knee strike were applied to inmate Kaili, these strikes were applied to areas not consistent with official training (head, neck, and side of torso). In addition, the strikes utilized on inmate Kaili were not appropriate for

the level of resistance inmate Kaili displayed, which Ms. Martinez described as passive and defensive.

31. Based on the video evidence, it appears that inmate Kaili's injuries were sustained during your subordinates' use of unnecessary, excessive, and improper use of force.
32. The video footage was evaluated by Sergeant Samuel Kao and Sergeant Pepe Ignacio Jr. (TSD staff and supervisors) who assisted in the training of PPCT (Pressure Point Control Tactics) for the BCT class ACOs DeMattos, Pinkney and Tagaloa attended. Both Sergeant Kao and Sergeant Ignacio Jr. stated that all of the kicks and strikes these ACOs utilized on inmate Kaili were not in compliance with official PPCT/BCT criteria.
33. According to the departmental Use of Force policy, COR.08.07.3.0.2; the department requires that, "When physical force is necessary, the level used shall be reasonable and appropriate to gain compliance and to maintain the security and custody of the facility." Your actions of permitting your subordinate staff to kick and strike inmate Kaili without intervention is contrary to policy, as the inmate displayed a low level of resistance.
34. In addition, based on the department's policy, COR.08.24: Use of Mechanical Restraints, "the use of mechanical restraints shall be placed on offenders as a precautionary measure, or when the freedom of movement may result in actual or imminent threat of bodily injury to the offender or others." Your description of inmate Kaili acting strangely and having an unknown state of mind warranted the use of mechanical restraints.
35. Based on a totality of the evidence, which included the video footage, documented evidence of inmate Kaili's injuries, and other correctional staff statements, it is evident that ACOs DeMattos, Pinkney and Tagaloa used unnecessary, improper, and excessive force on June 16, 2015, and you failed to intervene to have them cease their inappropriate conduct.
36. As a Sergeant (supervisor) for nine (9) years, and a public servant, you are entrusted with the custody and care of inmates. Your conduct and/or failure to act resulted in a physical assault on inmate Kaili that caused multiple abrasions to the face, black and blue eyes, and a fractured jaw. This is contrary to the mission of the department, "To uphold justice and public safety by providing correctional and law enforcement services to Hawaii's communities with professionalism, integrity and fairness," and the professional requirements of your position as an Adult Corrections Officer.
37. A review of your personnel file was conducted on November 2, 2016. The following information was considered 1) your last Performance Appraisal

Summary (PAS) was meets expectations; 2) your file did not contain any prior disciplinary action within the last 2 years and 3) your 18 years of service with the Department of Public Safety encompassing ACO Recruit-IV levels.

Accordingly, you are being afforded an opportunity to contest this discharge action before the Departmental Hearing Officer, Laurie Nadamoto. This Pre-Discharge Hearing will be held via video, and is scheduled for Tuesday, December 20, 2016, at 12:45 PM, at the Hawaii Intake Services Center. If you intend to exercise this opportunity, please call Ms. Nadamoto at 984-2400 x71416, by the close of business on December 16, 2016, to confirm. Any request for rescheduling or reasonable accommodation shall be made no later than five days prior to the hearing.

You have the right to have a union representative and/or witnesses on your behalf present. It is your responsibility to inform your representative and any witness of the hearing. If you have any additional documents or materials to support your position, please bring them to this hearing.

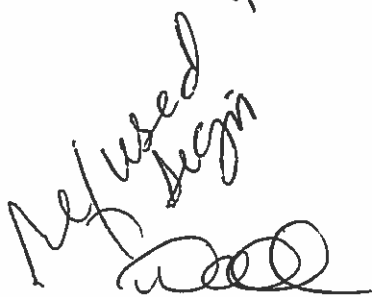
If you feel that this action is without just and proper cause, you have the right to process a grievance in accordance with the provisions of your Collective Bargaining Agreement.

Sincerely,



Nolan P. Espinda
Director

NPE:PLY:ply

Refused sign to


I acknowledge receipt of this letter of discharge

Jonathan Taum

Date



Supervisor

11-30-16

Date

C. WARDEN
PER-LR
PER-ERT
FISCAL
UNION

DAVID Y. IGE
GOVERNOR



STATE OF HAWAII
DEPARTMENT OF PUBLIC SAFETY
919 Ala Moana Boulevard, 4th Floor
Honolulu, Hawaii 96814

NOLAN P. ESPINDA
DIRECTOR

CATHY ROSS
Deputy Director
Administration

JODIE F. MAESAKA-HIRATA
Deputy Director
Corrections

RENEE SONOBE HONG
Deputy Director
Law Enforcement

No. ADM - 3921

January 4, 2017

CERTIFIED MAIL

Jonathan Taum
215 Kapualani St.
Hilo, HI 96720

CONFIDENTIAL

Dear Mr. Taum:

On December 20, 2016, your Pre-Discharge Hearing was held and the evidence presented by you and your representative was insufficient to overturn the sanction imposed by the discharge letter dated November 29, 2016. Therefore, the discharge is sustained.

It is noted that there was a typo in the Discharge letter stating that the date of the incident was June 16, 2015. The correct date of the incident is June 15, 2015, as noted in the investigation.

If you feel that this action is without just and proper cause, you may consult with the Union on this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Nolan P. Espinda", is written over a horizontal line.

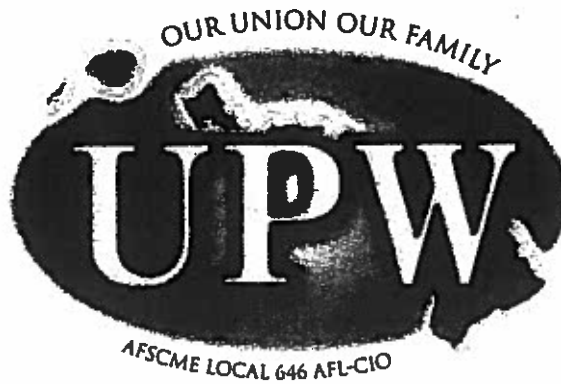
NOLAN P. ESPINDA
Director

cc: DA
WARDEN/BA
PER-LR
PER-ET
IIO
UNION
DHRD-LRD
[] FAXED TO UPW FROM FACILITY W/O ATTACHMENTS, DATE _____
[] HARD COPY TO UPW WITH ATTACHMENTS, DATE _____

EXHIBIT 1

"An Equal Opportunity Employer/Agency"

TAUM000008




January 20, 2017

Dear Mr. Taum

This is your notice of confirmation of your Step 1 appointment, January 24, 2017 at the UPW Office. The teleconference is scheduled for 9:00a.m. Please arrive 15 minutes prior to discuss the process.

Upon receipt of this letter, please call me at the office 961-3424, to confirm date of this meeting.

Sincerely


Jonathan J. Sloan
Business Agent

Lela taamilio

Labor Relations

DAVID Y. IGE
GOVERNOR



STATE OF HAWAII
DEPARTMENT OF PUBLIC SAFETY
919 Ala Moana Boulevard, 4th Floor
Honolulu, Hawaii 96814

FEB 3 '17 PM 1:04

NOLAN P. ESPINDA
DIRECTOR

Cathy Ross
Deputy Director
Administration

Jodie F. Maesaka-Hirata
Deputy Director
Corrections

Renee R. Sonobe Hong
Deputy Director
Law Enforcement

No. 2017-54/P17-0011

January 31, 2017

Mr. Jonathan Sloan, Business Agent
United Public Workers
362 East Lanikaula Street
Hilo, Hawaii 96720

RE: GRIEVANCE JS-17-02 FILED ON BEHALF OF JONATHAN TAUM,
ADULT CORRECTIONS OFFICER (ACO) IV

Dear Mr. Sloan:

This is in response to a Step 1 grievance filed on behalf of Jonathan Taum, ACO IV with the Hawaii Community Correctional Center. This grievance addresses his discharge from employment for failing to manage a Use of Force incident.

The Department has reviewed the issues presented by the Union and found no violations of the Bargaining Unit 10 Agreement occurred when the Grievant was discharged.

Based on the above, the Department respectfully denies this grievance.

Sincerely,

A handwritten signature in black ink, appearing to read "Nolan P. Espinda", is written over a horizontal line.

Nolan P. Espinda
Director

UPW, AFSCME, LOCAL 646, AFL-CIO
GRIEVANCE FORM
STEP 1

UPW Case #: JS-17-02

TO: Nolan P. Espinda	Public Safety	State of Hawaii
<hr/>		
FROM: Jonathan Sloan	Business Agent	UPW/Hawaii Division
<hr/>		
AFFECTED: Jonathan Taum	ACO III/CO-08, StepB/\$5233	SOH/PSD/HCCC
<hr/>		
Affected Employee	Class Title/Pay Grade	Employer/Department/Division/Unit

A. STATEMENT OF GRIEVANCE

1. ☒ Date of alleged violation or; December 23, 2016
☐ Continuous violation date first known:
2. Section(s) or provision(s) of the Agreement allegedly violated:
1,11,14,58,61
3. Nature of Complaint: (Date, facts, circumstances, etc.)
 - a. This grievance is being filed on behalf of Adult Corrections Officer (ACO) IV Jonathan Taum, employee no. 38662, employed with the State of Hawaii, Department of Public Safety (PSD), Hawaii Community Correctional Center (HCCC).
 - b. In a letter dated November 29, 2016, the Employer notified Taum of his discharge from work effective the close of business Friday, December 23, 2016.
 - c. This action was taken because on June 16, 2015, the grievant in his capacity as the Sergeant involved with the rehousing of an inmate, failed to manage a Use of Force incident with said inmate, resulting in the inmate being injured.
 - d. The Employer has violated Sections 1, 11, 14, 58 and 61, of the Unit 10 Agreement because The Employer has discharged ACO IV Jonathan Taum without due process and just cause when they discharged him effective December 23, 2016 without considering all the evidence presented at the December 20, 2016 Pre-Discharge Hearing.

B. REMEDY SOUGHT:

1. The Employer shall rescind the discharge, make Taum whole, restore all rights, benefits and status and lost wages. Cease and desist from further actions of similar nature and comply with the above-cited sections of the Agreement.
2. Other appropriate relief (from the Arbitrator).

MEETING REQUESTED: YES ☒ NO ☐



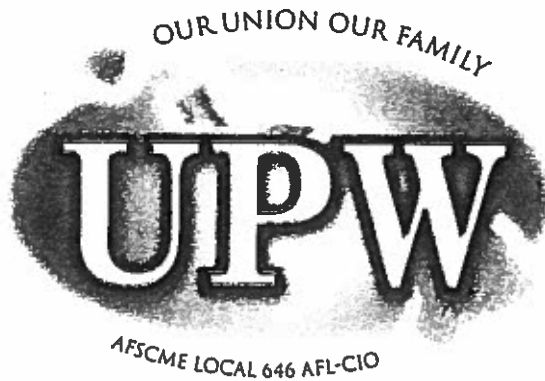
Signature of Grieving Party/Union Representative

January 05, 2017

Date

Signature of Grieving Party

Date



JS-17-02

May 15, 2017

Mr. James Nishimoto, Director
Department of Human Resources
Development
State of Hawaii
235 S. Beretania Street, Suite 1400
Honolulu, HI 96813


RE: ARBITRATION NOTICE- Grievance Case #JS-17-02 dated, January 05, 2017, filed on behalf of Jonathan Taum, State of Hawaii, Department of Public Safety, Corrections, Hawaii Community Correctional Center

Dear Mr. Nishimoto:

Be informed that the United Public Workers is submitting the above-cited grievance to arbitration.

Wendy Campaniano, Esq. will be the Union representative in arbitration. Please have your representative contact Ms. Campaniano to comply with the arbitration provisions of the grievance procedure.

Sincerely,

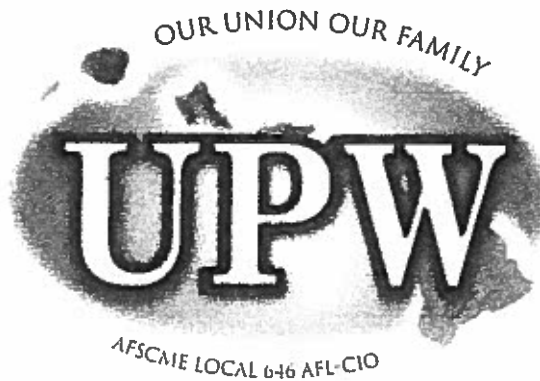

for DAYTON M. NAKANELUA
State Director

DMN:si

c: Jonathan Taum, Grievant
Jonathan Sloan, UPW Business Agent
Loyna Kamakeeaina, Hawaii Division Director
Wendy Campaniano, Esq. (w/grievance file)

HEADQUARTERS - 1426 North School Street ♦ Honolulu, Hawaii 96817-1914 ♦ Phone: (808) 847-2631
HAWAII - 362 East Lanikaula Street ♦ Hilo, Hawaii 96720-4336 ♦ Phone: (808) 961-3424
KAUAI - 4211 Rice Street ♦ Lihue, Hawaii 96766-1325 ♦ Phone: (808) 245-2412
MAUI - 841 Kolu Street ♦ Wailuku, Hawaii 96793-1313 ♦ Phone: (808) 244-0815
1-866-454-4166 (Toll Free, Molokai/Lanai only)

TAUM000012



JS-17-02

May 15, 2017


Jonathan Taum
215 Kapualani Street
Hilo, HI 96720

RE: ARBITRATION NOTICE - GRIEVANCE CASE #JS-17-02

Dear Mr. Taum:

As the affected employee, the Union is informing you that it is submitting the above-cited grievance to arbitration. However, the decision to arbitrate is subject to further review that may result in the grievance being withdrawn from arbitration.

Sincerely,


for DAYTON M. NAKANELUA
State Director

DMN:si

c: Jonathan Sloan, UPW Business Agent
Loyna Kamakeeaina, Hawaii Division Director
Wendy Campaniano, Esq. (w/ grievance file)

**P.O. Box 29146
Honolulu, Hawaii 96820
Telephone: (808) 748-8988
Email: wcampaniano@aol.com**

Mr. Jonathan Taum
215 Kapualani Street
Hilo, Hawaii 96720

Dear Mr. Taum,

This letter is to update you on the progress of the above-entitled matter.

The parties selected Ms. Maura Okamoto, Esq. to serve as Arbitrator and a prehearing conference was held on June 30, 2017. The hearing has been scheduled as follows:

DATES: **Wednesday, October 4, 2017**
 Thursday, October 5, 2017
 Thursday, October 12, 2017

PLACES: October 4 and 5, 2017: Honolulu
Dept. of the Attorney General
235 S. Beretania Street, 15th Floor

**October 12, 2017: Hilo
UPW Office
362 E. Lanikaula Street**

TIME: **October 4 and 5, 2017:** **9:00 a.m.**
 October 12, 2017: **10:00 a.m.**

Please note that the above dates are subject to change, as we may need to schedule additional dates, if necessary.

I request that both you and Mr. Sloan be present for the hearing in Honolulu. Please work with Mr. Sloan to obtain authorization for air travel, hotel, and ground transportation from the UPW State Director.

July 3, 2017
Page 2

By copy of this letter to Mr. Sloan, I request that the conference room at the UPW office be reserved for the hearing on October 12, 2017.

Thank you for your attention and patience.

Very truly yours,



WENDY L. CAMPANIANO

cc: Mr. Jonathan Sloan - UPW (via email only)



Subject New Hearing Dates
From wcampaniano@aol.com <wcampaniano@aol.com>
To: jontaum@yahoo.com <jontaum@yahoo.com>
Date Wed, Sep 13, 2017 at 11:43 AM

Mr. Taum,

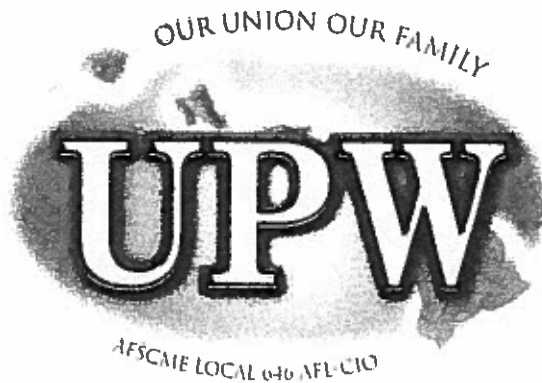
The new hearing dates are as follows:

Tues., Nov. 7, 2017: Honolulu
Wed., Nov. 8, 2017: Honolulu
Thurs., Nov. 9, 2017: Honolulu

Wed., Nov. 15, 2017: Hilo
Thurs., Nov. 16, 2017: Hilo

Thank you,
Wendy

The information contained in this electronic message may contain privileged and confidential information and is intended solely for use by the intended individual to whom it is addressed. If this message was sent to you in error or you are not the intended recipient, you are hereby notified that any dissemination, reproduction, or copying of this message and/or any attachments is strictly prohibited. If you have received this message in error, please notify this office immediately by calling 808-748-8988 and return the original message and any attachments to wcampaniano@aol.com. Thank you.



JS-17-02

September 25, 2017

Jonathan Taum
215 Kapualani Street
Hilo, HI 96720

RE: ARBITRATION WITHDRAWN - GRIEVANCE CASE #JS-17-02

Dear Mr. Taum:

As the affected employee, the Union notified you by letter dated May 15, 2017 that the above-cited grievance was submitted for arbitration.

Based on a review of the entire matter, including but not limited to the applicable provisions of the Collective Bargaining Agreement (CBA) and the evidence presented, the Union has decided not to pursue the grievance because there is insufficient proof that there is a violation of the CBA.

Sincerely,

DAYTON M. NAKANELUA
State Director

DMN:si

c: Jonathan Sloan, UPW Business Agent
Loyna Kamakeeaina, Hawaii Division Director
Wendy Campaniano, Esq.

LAW OFFICE OF
WENDY L. CAMPANIANO

P.O. Box 29146
Honolulu, Hawaii 96820
Telephone: (808) 748-8988
Email: wcampariano@aol.com

October 2, 2017

Mr. Jonathan Taum
215 Kapualani Street
Hilo, Hawaii 96720

RE: Arbitration Between United Public Workers, AFSCME, Local 646, AFL-CIO and State of Hawaii, Department of Public Safety, Hawaii Community Correctional Center (Grievance of JONATHAN TAUM) (JS-17-02)

Dear Mr. Taum,

I am in receipt of a copy of a letter dated September 25, 2017 sent to you by UPW State Director Dayton Nakanelua, informing you that the grievance above has been withdrawn from arbitration.

The arbitration hearing scheduled for November 7, 8, 9, 11, and 16, 2017, therefore, will be cancelled and the grievance file returned to the Union.

Please be advised that the withdrawal of the grievance effectively terminates my role as counsel for this case. Should you have any questions, please direct them to the Union.

Thank you for your attention.

Very truly yours,

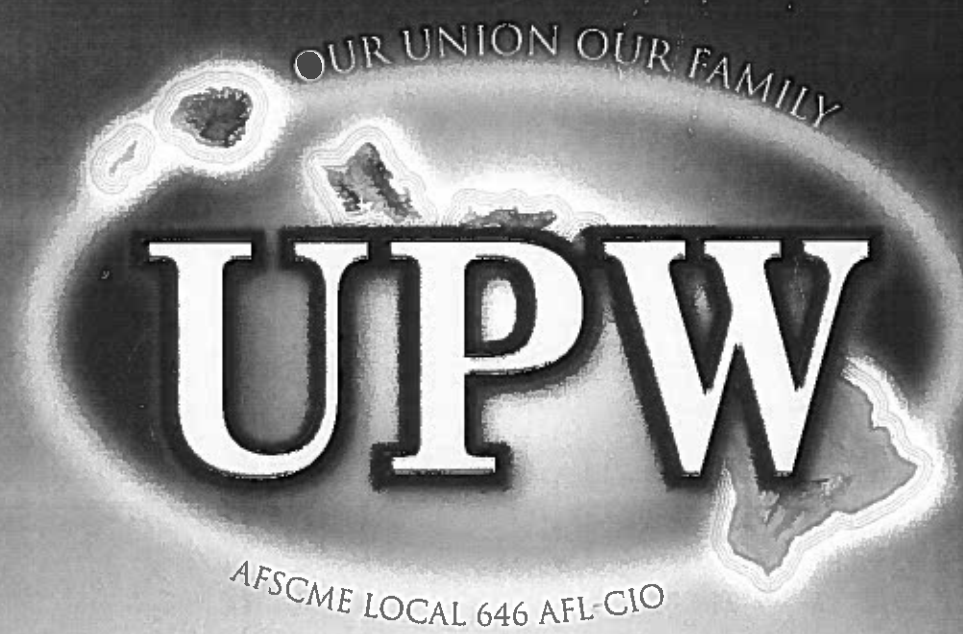


WENDY L. CAMPANIANO

cc: Dayton Nakanelua - UPW State Director
Jonathan Sloan - Union Agent

EXHIBIT 1

TAUM000018



UNITED PUBLIC WORKERS

UNIT 10 AGREEMENT

JULY 1, 2013 - JUNE 30, 2017

EXHIBIT 2

TAUM000019

UNIT 10 AGREEMENT - July 1, 2013 to June 30, 2017

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UNIT 10 AGREEMENT – July 1, 2013 to June 30, 2017

This MEMORANDUM OF AGREEMENT by and between the STATE OF HAWAII, the JUDICIARY, the HAWAII HEALTH SYSTEMS CORPORATION, and the CITY AND COUNTY OF HONOLULU, hereafter collectively the “EMPLOYER”, and the UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO, hereafter the “UNION”, constitutes the basis of settlement of the Unit 10 Collective Bargaining Agreement reached on November 25, 2013 that is effective July 1, 2013 to and including June 30, 2017.

JOINT MESSAGE FROM THE UNITED PUBLIC WORKERS AND THE EMPLOYER

The Union and the Employer agree to promote harmonious and cooperative employer-employee relations through collective bargaining to assure safe, effective and orderly operations of government. To this end, the Union and the Employer agree that having public employees share in the decision-making process on matters of wages, hours, and other conditions of employment, while maintaining the merit principle, will promote responsiveness and exchange of ideas and information, thereby making government more effective.

The Union and the Employer are committed to establishing and maintaining a positive working relationship to harness and direct the energies of public employees eager to have a voice in determining their conditions to work to improve government service.

SECTION 1. RECOGNITION.

1.01 EXCLUSIVE BARGAINING REPRESENTATIVE.

The Employer recognizes the Union as the exclusive bargaining representative for those public Employees in the Institutional, Health and Correctional Workers Unit, Non-Supervisory and Supervisory.

1.02 NEGOTIATE AND ADMINISTER.

The Employer and the Union recognize the rights and obligations of the parties to negotiate wages, hours and other terms and conditions of employment and to administer this Agreement on behalf of covered Employees, and that such administration shall apply equally to Employees in the bargaining unit without regard to membership or non-membership in the Union.

1.03 MEMBERSHIP OR NON-MEMBERSHIP.

The Employer and the Union will not interfere with the right of an Employee to join or refrain from joining the Union. The Employer will make known to new Employees that they will secure no advantage or more favorable consideration or any form of privilege because of membership or non-membership in the Union.

1.04 FURNISH AGREEMENT.

The Employer shall furnish a copy of this Agreement to personnel not within the bargaining unit but charged with the administration of this Agreement.

1.05 CONSULT OR MUTUAL CONSENT.

The Employer shall consult the Union when formulating and implementing personnel policies, practices and any matter affecting working conditions. No changes in wages, hours or other conditions of work contained herein may be made except by mutual consent.

1.06 RELEVANT PERSONNEL INFORMATION.

The Employer will make available to the Union, upon request, relevant personnel information needed to chart accurately an individual Employee's personnel transactions.

1.07 SCATTER GRAM.

The Employer shall provide to the Union a scatter gram reflecting Employee distribution on the salary schedule as of July 15th of each year. The scatter gram will show the number of Employees in each pay grade and basic rate of pay of the salary schedule.

UNIT 10 AGREEMENT – July 1, 2013 to June 30, 2017

- 8.06** In addition to the foregoing meetings, additional meetings may be held by mutual agreement between the Union and the Employer.
- 8.07** The Employer will provide the Union with a list of its authorized representatives and maintain its currency.
- 8.08** Representatives of the Union shall be invited to attend an orientation meeting held by the Employer during working hours for new Employees and shall be allowed up to thirty (30) minutes to address the Employees at the meeting.

SECTION 9. RIGHTS OF THE EMPLOYER.

- 9.01** The Employer reserves and retains, solely and exclusively, all management rights, powers and authority, including the right of management to manage, control and direct its work forces and operations except those as may be granted under this Agreement.

SECTION 10. NO STRIKE OR LOCKOUT.

- 10.01** For the duration of this Agreement the Union or Employees of the bargaining unit will not authorize, instigate, aid or engage in any work stoppage, slowdown, sickout, refusal to work, picketing or strike against the Employer.
- 10.02** For the duration of this Agreement, the Employer will not lockout its Employees.

SECTION 11. DISCIPLINE.

11.01 **PROCESS.**

- 11.01 a.** A regular Employee shall be subject to discipline by the Employer for just and proper cause.
- 11.01 b.** An Employee who is disciplined, and the Union, shall be furnished the specific reason(s) for the discipline in writing on or before the effective date of the discipline except where the discipline is in the form of an oral warning or reprimand. However, if the oral warning or reprimand is documented or recorded for future use by the Employer to determine future discipline the Employee who is disciplined shall be furnished the specific reason(s) for the oral warning or reprimand in writing.
- 11.01 c.** When an Employee is orally warned or reprimanded for disciplinary purposes, it shall be done discreetly to avoid embarrassment to the Employee.

UNIT 10 AGREEMENT – July 1, 2013 to June 30, 2017

11.01 d. In the event the need to impose discipline other than an oral warning or reprimand is immediate, the Employee and the Union shall be furnished the reason(s) in writing within forty-eight (48) hours after the disciplinary action is taken.

11.01 e. Written notifications of disciplinary actions involving suspension and discharge shall include the following:

11.01e.1. Effective dates of the penalties to be imposed and

11.01e.2. Details of the specific reasons.

11.01f. An Employee who is discharged shall be granted an opportunity to respond to the charges prior to the effective date of discharge.

11.02 **MEETING.**

11.02 a. In the event that an Employee is scheduled in advance by the Employer to meet to answer questions, the Employee shall be informed of the purpose of the meeting.

11.02 b. When the subject of the meeting is on a job related incident and the Employee reasonably feels that disciplinary action may result from the meeting, the Employee may request that a Union representative or steward be present in the meeting.

11.02 c. The Employee shall be credited with work time in the event the meeting is held on non-work hours.

SECTION 11A. LEAVE PENDING INVESTIGATION OF CHARGES.

11A.01 **INVESTIGATION.**

When an investigation of charges against an Employee is pending and the Employee's presence at the workplace is deemed to be detrimental to the conduct of the investigation or the operations of the workplace, the Employer may place the Employee on a leave of absence without pay pending investigation as follows:

11A.01 a. The Employee, who is placed on a leave of absence without pay pending investigation, and the Union, shall be given written notice within forty-eight (48) hours after the action is taken.

11A.01 b. The written notice shall include the specific reason(s) for placing the Employee on leave of absence without pay pending investigation, available facts supporting the reason(s), and the effective date of the leave of absence without pay pending investigation.

11A.01 c. The leave of absence without pay pending investigation shall be for the length of time necessary to conclude the investigation, but not exceeding thirty (30) days. In

UNIT 10 AGREEMENT – July 1, 2013 to June 30, 2017

the event the investigation exceeds thirty (30) days, the Employer may exercise its options as provided in Section 11A.02.

11A.01 d. After the investigation ends, the Employee who has been placed on leave of absence without pay pending investigation shall be reinstated without loss of pay and all rights and benefits will be restored as though the Employee had not been on leave of absence without pay pending investigation if the Employee is cleared by the investigation or the charge is dropped or not substantiated.

11A.01 e. In the event the Employee is suspended, the Employer may consider applying any portion of the leave of absence without pay pending investigation towards fulfilling, in whole or in part, the suspension.

11A.01 f. In the event the Employee is discharged, the Employee shall not be granted any back pay or restored with any rights and benefits for the leave of absence without pay pending investigation.

11A.02 **OPTIONS.**

11A.02 a. Whenever an investigation of charges against an Employee is pending, the Employer shall have the option to:

11A.02a.1. Retain the Employee at work,

11A.02a.2. Place the Employee on leave of absence with pay,

11A.02a.3. Return the Employee to work from the leave without pay pending investigation, or

11A.02a.4. Reassign the Employee to a temporary workplace in the same or different position.

11A.02 b. The decision of the Employer shall be for the length of time necessary to conclude the investigation.

SECTION 12. LAYOFF.

12.01 All personnel actions under Section 12 shall be restricted to Employees of Bargaining Unit 10 and shall be confined to the Employer in which the layoff occurs.

12.02 **FIRST NOTICE.**

12.02 a. When there is an impending layoff because of lack of work, need, or funds, the Employer shall inform the affected Employee and the Union of this in writing as soon as possible but in any case at least ninety (90) calendar days before the impending layoff will take place.

- 13.04 d.** The Employee fails to respond within a period of ten (10) days to a written inquiry sent to the address provided by the Employee.
- 13.04 e.** Withdrawal by the Employee.
- 13.04 f.** Refusal of two (2) offers of employment under conditions that the Employee had previously indicated the Employee would accept.
- 13.04 g.** The Employee fails to report to duty after appointment within the time prescribed by the Employer unless good cause is shown.

SECTION 14. PRIOR RIGHTS, BENEFITS AND PERQUISITES.

- 14.01** Nothing in this Agreement shall be construed as abridging, amending or waiving any rights, benefits or perquisites presently covered by constitutions, statutes or rules and regulations that Employees have enjoyed heretofore, except as expressly superseded by this Agreement.

SECTION 15. GRIEVANCE PROCEDURE.

- 15.01** **PROCESS.**
A grievance which arises out of alleged Employer violation, misinterpretation, or misapplication of this Agreement, its attachments, exhibits, and appendices shall be resolved as provided in Section 15.
- 15.02** **DEFINITION.**
The term grievance shall mean a complaint filed by a bargaining unit Employee, or by the Union, alleging a violation, misinterpretation, or misapplication of a specific section of this Agreement occurring after its effective date.
- 15.03** **GRIEVANCE WITHOUT UNION REPRESENTATION.**
- 15.03 a.** An Employee may process a grievance and have the grievance heard without representation by the Union except as provided in Section 15.18.
- 15.03 b.** No meeting shall be held to discuss the grievance without first making an attempt to arrange a mutually acceptable meeting time with the grieving party and the Union, provided that the meeting shall be held within the time limits as provided in Section 15.
- 15.03 c.** No resolution of a grievance filed as provided in Section 15.03 shall be made at any step of the grievance procedure, which is inconsistent with this Agreement.

15.04

CLASS GRIEVANCE.

A class grievance may be filed at Step 2 by mutual agreement between the Union and the Employer or the Employer's designee within the time limits in Section 15.11.

15.05

REQUIREMENTS.

15.05 a.

A grievance not filed as provided in Section 15 need not be considered by the Employer.

15.05 b.

By mutual agreement between the Union and the Employer any requirement of Section 15 may be waived.

15.06

FAILURE TO RESPOND.

In the event the Employer fails to respond within the time limits of any step of Section 15, the grievance may be appealed to the next step.

15.07

INFORMAL RESOLUTION.

A grievance shall, whenever possible, be discussed and resolved informally between the grieving party and/or the Union with the immediate supervisor.

15.08

MEETING.

By verbal request, the grieving party and/or the Union representative shall be provided an opportunity to meet in Steps 1 and 2 in an attempt to resolve the grievance.

15.09

INFORMATION.

The Employer shall provide all information in the possession of the Employer, which is needed by the grieving party and/or the Union to investigate and/or process a grievance as follows:

15.09 a.

Photocopy and give the material requested to the grieving party and/or the Union within seven (7) calendar days of the request; or

15.09 b.

Make the material requested available to the grieving party and/or the Union within seven (7) calendar days of the request for the purpose of photocopying or review for five (5) calendar days on the condition that the grieving party and/or the Union agrees to sign Exhibit 15.09 and be responsible for the material until it is returned.

15.10

FORMAL GRIEVANCE.

In the event the grievance is not satisfactorily resolved on an informal basis, the grieving party and/or the Union may file a formal grievance by completing the grievance form provided by the Union.

15.11

STEP 1: GRIEVANCE.

The grievance shall be filed with the department head or the department head's designee in writing as follows:

15.11 a.

Within eighteen (18) calendar days after the occurrence of the alleged violation. The term "after the occurrence of the alleged violation" as provided in Section 15.11 a. shall mean:

15.11 a.1.

Discharge: Eighteen (18) calendar days after the effective date of the discharge.

15.11 a.2.

Suspension: Eighteen (18) calendar days after the last day of the suspension.

15.11 a.3.

Other Disciplinary Actions: Eighteen (18) calendar days after the effective date of the discipline.

15.11 a.4.

Other Alleged Violation(s): Eighteen (18) calendar days after the alleged violation(s) occurred unless the violation(s) are continuing as provided in Section 15.11 b.

15.11 b.

Within eighteen (18) calendar days after the alleged violation first became known to the Employee or the Union if the Employee did not know of the alleged violation if it is a continuing violation.

15.11 c.

Within eighteen (18) calendar days after the alleged violation is discovered by the grieving party and/or the Union if it is a payroll computational error.

15.12

STEP 1: DECISION.

The decision of the department head or the department head's designee shall be in writing and shall be transmitted to the grieving party and/or the Union within thirteen (13) calendar days after receipt of the grievance.

15.13

STEP 2: APPEAL OR GRIEVANCE.

15.13 a.

In the event the grievance is not resolved in Step 1, the grieving party and/or the Union may file a letter of appeal with the Employer or the Employer's designee specifying the reasons for the appeal together with a copy of the grievance and a copy of the Step 1 decision within nine (9) calendar days after receipt of the Step 1 decision.

15.13 b.

In the event a grievance is filed at Step 2 as provided in Section 15.04, the grievance shall be filed as provided in Section 15.11 except that the grievance shall be filed with the Employer or the Employer's designee instead of the department head or the department head's designee.

15.14 **DIFFERENT ALLEGATIONS.**

The Employer or the Employer's designee need not consider a Step 2 grievance, which encompasses different allegations than those alleged in Step 1.

15.15 **STEP 2: DECISION.**

The decision of the Employer or the Employer's designee shall be in writing and transmitted to the grieving party and/or the Union within nine (9) calendar days after receipt of the appeal.

15.16 **STEP 3: ARBITRATION.**

In the event the grievance is not resolved in Step 2, and the Union desires to submit the grievance to arbitration, the Union shall notify the Employer within thirty (30) calendar days after receipt of the Step 2 decision.

15.17 **SELECTION OF THE ARBITRATOR.**

Within fourteen (14) calendar days after the notice of arbitration, the parties shall select an Arbitrator as follows:

15.17 a. By mutual agreement from names suggested by the parties.

15.17 b. In the event the parties fail to select an Arbitrator by mutual agreement either party shall request a list of five (5) names from the Hawaii Labor Relations Board from which the Arbitrator shall be selected as follows:

15.17 b.1. The Union and the Employer by lot shall determine who shall have first choice in deleting a name from the list of Arbitrators.

15.17 b.2. Subsequent deletions shall be made by striking names from the list on an alternating basis and the remaining name shall be designated the Arbitrator.

15.18 **ISSUES TO BE ARBITRATED.**

15.18 a. Within five (5) calendar days after the Arbitrator has been selected each party may submit a statement of its view as to the issue(s) to the Arbitrator with a copy to the other party.

15.18 b. The Arbitrator shall determine the issue(s) at the hearing.

15.18 c. The date, time and place of the hearing fixed by the Arbitrator shall be within twenty (20) calendar days from the selection of the Arbitrator.

15.19 **ARBITRABILITY.**

15.19 a. A grievance may not be arbitrated unless it involves an alleged violation, misinterpretation, or misapplication of a specific section of this Agreement.

15.19 b. In the event the Employer disputes the arbitrability of a grievance the Arbitrator shall determine whether the grievance is arbitrable prior to or after hearing the merits of the grievance. If the Arbitrator decides the grievance is not arbitrable, the grievance shall be referred back to the parties without decision or recommendation on its merits.

15.20 **AWARD.**

15.20 a. The Arbitrator shall render the award in writing no later than thirty (30) calendar days after the conclusion of the hearing(s) and submission of briefs provided, however, the submission of briefs may be waived by mutual agreement between the Union and the Employer.

15.20 b. The award of the Arbitrator shall be final and binding provided, the award is within the scope of the Arbitrator's authority as described as follows:

15.20 b.1. The Arbitrator shall not have the power to add to, subtract from, disregard, alter, or modify any of the sections of this Agreement.

15.20 b.2. The Arbitrator shall be limited to deciding whether the Employer has violated, misinterpreted, or misapplied any of the sections of this Agreement.

15.20 b.3. A matter that is not specifically set forth in this Agreement shall not be subject to arbitration.

15.20.b.4. The Arbitrator shall not consider allegations which have not been alleged in Steps 1 and 2.

15.21 **FEES.**
The fees of the Arbitrator, the cost of transcription and other necessary general costs, shall be shared equally by the Employer and the Union. Each party will pay the cost of presenting its own case and the cost of any transcript that it requests.

15.22 **TIME OFF TO TESTIFY.**
The Grievant and Employees shall be permitted time off with pay to testify in grievance meetings and arbitration hearings.

SECTION 58. BILL OF RIGHTS.

58.01 STATEMENT.

No Employee shall be required to sign a statement of complaint filed against the Employee.

58.02 INVESTIGATION.

58.02 a. If the Employer pursues an investigation based on a complaint, the Employee shall be advised of the seriousness of the complaint.

58.02 b. The Employee will be informed of the complaint, and will be afforded an opportunity to respond and/ or refute the complaint.

58.03 When investigating complaints against Employees by patients, inmates, and residents, weight shall be given to the mitigating circumstances, including the difficulties of working with some types of patients, inmates, and residents.

58.04 Before making a final decision, the Employer shall review and consider all available evidence, data, and factors supporting the Employee, whether or not the Employee provides factors in defense of the complaint.

58.05 In the event the complaint is not substantiated or the Employee is not disciplined, the complaint and all relevant information shall be destroyed, provided that the Employer may retain a summary of such information outside of the official personnel file whenever such complaint may result in future liability to the Employer, including but not limited to, discrimination complaints.

SECTION 59. MILEAGE REIMBURSEMENT.

59.01 RATE.

The Employer's present rules and regulations, policy and/or resolution of reimbursing an Employee for use of a personal vehicle while working shall be modified to provide for reimbursement for each mile traveled for business purposes at the standard mileage rate prescribed by the Internal Revenue Service for each mile traveled for business purposes.

59.02 DEFINITION OF VEHICLE.

The term "vehicle" in Section 59 applies to automobiles, trucks, vans, buses or motorcycles, provided that the mileage reimbursement rate for motorcycles shall be one-half (1/2) of the reimbursement rate as provided in Section 59.01.

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59.03

CALL-OUT.

Mileage reimbursement to and from home to the workplace shall be granted for call-out work as provided in Section 33.02.

59.04

DAYS OFF AND HOLIDAYS.

Mileage reimbursement shall be granted for overtime work on days off and holidays, except for Employees whose work hours include a holiday.

59.05

REPAIRS.

The Employer shall pay up to fifty dollars (\$50.00) for repairs of damages to an Employee's personal vehicle, provided that the following conditions are met:

59.05 a.

An investigation of the damages verifies the damages were caused by the act of patients while in transport in the Employee's vehicle.

59.05 b.

The transportation of patients in the Employee's vehicle was required by the Employer.

59.05 c.

The damage was not the result of negligence or carelessness by the Employee.

59.06

REIMBURSEMENT DEADLINE.

The Employer shall provide the mileage reimbursement to the eligible Employee within thirty (30) days (approximately two pay periods) from the date on which the claim for mileage reimbursement is filed with the Employer.

SECTION 60. LICENSES.

60.01

When an Employee is required by law and/or the Employer to obtain licenses and/or certificates in order to work in an existing position and temporary assignments the initial cost of obtaining licenses and/or certificates shall be reimbursed by the Employer upon proof of certificate. In the event formal training is required prior to obtaining the license and/or certificate, the cost shall be paid by the Employer.

SECTION 61. CORRECTION OFFICERS.

61.01

Section 61 shall apply to Adult and Youth Correction Officers and Juvenile Detention Employees.

61.02

DISCIPLINE.

In addition to Section 11 the following shall apply:

61.02 a.

No material concerning a complaint shall be placed in the Employee's personnel file if it is found to be unjustified.

- 61.02 b.** No Employee shall be subjected to a polygraph or a psychological stress evaluation test.
- 61.02 c.** No Employee shall be subjected to a psychological and/or psychiatric examination on stress unless the Employee claims stress as a factor.
- 61.02 d.** No promise of reward or direct threats shall be made by the Employer during questioning.
- 61.02 e.** The Employee shall be informed if a tape recording is being made of the investigatory questioning, and upon request the Employer shall make a copy of the recording on a tape provided by the Union.

61.03 **HOSPITAL ASSIGNMENT.**

- 61.03 a.** In conjunction with Section 18.02 g. an Employee on hospital assignment (outside the facility), which does not allow the Employee to leave a post, shall be furnished a mid-shift meal.
- 61.03 b.** If the Employer is unable to furnish or arrange for a mid-shift meal, the Employee shall be provided a meal allowance as provided in Section 34.

61.04 **WORK SCHEDULES.**
(In lieu of Section 25.03)

Section 61.04 a. applies to Adult Correction Officers and Section 61.04 b. applies to Youth Correction Officers.

61.04 a. **SHIFT WORK — ADULT CORRECTION OFFICERS.**
The work schedules shall be prepared and administered as follows:

- 61.04 a.1.** Each work schedule shall be prepared for twelve (12) weeks.
- 61.04 a.2.** The Employer shall set forth its required manpower coverage (including gender specific work) for the required shifts per day over a seven (7) day work week referred to as work schedule in Section 61.04 a.

61.04 a.3. **NUMBER OF EMPLOYEES.**

- 61.04 a.3.a)** The work schedule shall specify the number of Employees in each work classification needed for the required shifts for each day of each post and/or work assignment of each work week as exemplified in Exhibit 61.04 a.3.a).
- 61.04 a.3.b)** Each post shall be identified as provided in Exhibit 61.04 a.3.b).

61.04 a.4. **DEFINITION AND REQUIREMENTS.**

61.04 a.4.a) Essential Posts: The minimum posts required to secure, house, clothe and feed the inmates of a facility and provide safety for the Employees, inmates and the public.

61.04 a.4.a)1) The posts are identified as provided in Exhibit 61.04 a.4.a) and must be manned at all times.

61.04 a.4.a)2) An absence shall be filled by the reassignment of an Employee from posts other than "Essential Posts" or by overtime as determined by the Employer.

61.04 a.4.b) Lock Down: Emergency situations where inmates are locked in their cells for control, safety and security purposes. Emergency situations include escapes, riots, blackouts or other potentially disruptive and volatile situations requiring extreme measures of security.

61.04 a.4.c) Special Assignments (SA): Used to designate assignments to relieve posts when Employees are absent due to sickness, vacation or other reasons and/or to be utilized for other correctional activities as determined by the Employer. The Special Assignments are identified as provided in Exhibit 61.04 a.4.c).

61.04 a.5. **PRESENTED TO EMPLOYEES.**

The work schedule shall be presented to Employees commencing in Work Unit or Workplace seniority order for each classification twelve (12) weeks prior to the beginning of the work schedule.

61.04 a.6. **WORKDAYS, DAYS OFF, SHIFTS AND POSTS.**

Employees shall have three (3) weeks to exercise their choices of workdays, days off, shifts and posts, however, in choosing workdays, days off, shifts and posts each Employee is required to select the same workdays, days off, shifts and posts for each work week of the twelve (12) week period, subject to the manpower coverage, contractual restrictions and limitations in order of Work Unit or Workplace seniority for each classification.

61.04 a.6.a) An Employee who selects an "Essential Post" shall be required to provide notification of absence on account of sickness two (2) hours prior to the beginning of the Employee's work shift for each day of absence in lieu of Section 37.04 a. If notification has not been given, the absence shall be charged to unauthorized leave of absence without pay and subject to discipline as provided in Section 38.11 c.

61.04 a.6.b) An Employee who selects an "Essential Post" shall not be assigned to relieve an Employee absent due to sickness, vacation or other reasons from an "Essential Post".

61.04 a.6.c) An Employee who selects a “Special Assignment” (SA) shall be utilized to relieve a post when an Employee is absent due to sickness, vacation or other reasons and/or to be utilized for other correctional activities as determined by the Employer.

61.04 a.7. **CONTACT BY THE SUPERVISOR.**
When an Employee is not available to exercise the choices because of an authorized absence, the Employer shall make a reasonable effort to contact the Employee and give the Employee a reasonable time to exercise the choices. Contact by the supervisor shall not qualify the Employee for overtime.

61.04 a.8. **EXERCISE CHOICES.**

61.04 a.8.a) Each Employee shall exercise the choices on the first workday that the Employee is assigned by the Employer to exercise the choices.

61.04 a.8.b) When an Employee does not exercise the choices, the Employee shall be assigned to any unselected workdays, days off, shifts and posts without regard to seniority.

61.04 a.9. **REVIEW CHOICES.**
The Employer shall have two (2) calendar weeks to review the choices made by the Employees to ascertain whether any of the choices would violate this Agreement. In the event it is necessary to modify choices to avoid violations of this Agreement, the Employer shall contact Employees to have them modify their choices.

61.04 a.10. **POSTING.**
The Employer shall post the final work schedule at least four (4) weeks in advance.

61.04 a.11. **EXEMPTIONS.**

61.04 a.11.a) The Employer shall not pay overtime as a result of the application of Section 61.04 a. which allows for the selection of workdays, days off, shifts and posts by seniority.

61.04 a.11.b) Section 35.03 shall not be applicable to Employees subject to Section 61.04 a.

61.04 a.12. **EXCHANGE.**
Employees may exchange workdays, days off and shifts during the same workweek with the Employer’s approval. Employee initiated exchanges shall be requested on a form and shall not qualify the Employees involved in the exchange for overtime.

SECTION 64. STAFFING AND WORKLOAD.

- 64.01** The Employer will endeavor to provide adequate staff to facilities providing services essential to the protection of public health and safety.
- 64.02** The Employer and the Union shall investigate vacancies of authorized positions and recommend action to fill vacancies.

SECTION 65. ALCOHOL AND CONTROLLED SUBSTANCE TEST.

New Section 65, Alcohol and Controlled Substance Test shall be applicable to the State of Hawaii, the Hawaii Health Systems Corporation, and the Judiciary.

65.01 STATEMENT OF PURPOSE.

- 65.01 a.** Section 65 is intended to keep the workplace free from the hazards of the use of alcohol and controlled substances by adopting the U.S. Department Of Transportation's rules and regulations as provided in the Omnibus Transportation Employee Testing Act of 1991, hereafter "DOT Rules".
- 65.01 b.** Employees subject to alcohol and controlled substance tests and who are subject to disciplinary actions by Section 65 shall be afforded "due process" as provided in Section 65.
- 65.01 c.** Employees of the Judiciary, the Hawaii Health Systems Corporation and the State of Hawaii except the Department of Public Safety are afforded an amnesty period of three (3) months as provided in Section 65.02 e. The amnesty period provides Employees an opportunity to declare their interest in participating in rehabilitation for alcohol misuse and/or controlled substance use, which is prohibited by Section 65.03, without being disciplined. Employees who decide to participate in the amnesty period must complete and submit the confidential form "Exhibit 65.02e. Amnesty Agreement" no later than the last day of the amnesty period. Employees will be informed in advance of the amnesty period.

65.02 DEFINITIONS.

- 65.02 a.** **ALTERCATION.**
A row (occurrence) within the course and scope of the Employee's duties involving an Employee and a ward, patient, detainee, inmate, volunteers, non Employees and other Employees.

- 65.02 b.** **ALCOHOL.**
The intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohol including methyl alcohol and isopropyl alcohol.

65.02 c. ALCOHOL CONCENTRATION.

The alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath.

65.02 d. ALCOHOL USE.

The consumption of any beverage, mixture, or preparation, including any medication, containing alcohol.

65.02 e. AMNESTY PERIOD.

The predetermined period for Employees of the Judiciary, the Hawaii Health Systems Corporation and the State of Hawaii except the Department of Public Safety prior to the implementation of Section 65 during which no discipline as provided in Section 65 are to be contemplated or implemented by the Employer against an Employee.

65.02 f. CONTROLLED SUBSTANCE.

Substance other than alcohol such as marijuana, cocaine, opiates, amphetamines, and phencyclidine, and other substances under the Controlled Substance Act (21 U.S.C. 802) as may be revised.

65.02 g. COVERED EMPLOYEE.

An Employee in Unit 10 who works for the State of Hawaii, the Judiciary and the Hawaii Health Systems Corporation.

65.02 h. EMPLOYER.

The State of Hawaii, the Judiciary, and the Hawaii Health Systems Corporation.

65.02 i. FIREARMS.

A weapon from which a shot is discharged.

65.02 j. WORK.

Work means from the time the Employee begins to work or is required to be in readiness to work until the time the Employee ends work.

65.02 k. SUPERVISOR.

The Employer designee who has passed requirements as provided in Section 65.07.

65.03 PROHIBITIONS.

65.03 a. ALCOHOL.

Employees shall not:

65.03 a.1. Report to work or continue working while having an alcohol concentration of 0.02 or higher.

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- 65.03 a.2.** Possess alcohol while working.
- 65.03 a.3.** Use alcohol while working.
- 65.03 a.4.** Work within four (4) hours after using alcohol.
- 65.03 a.5.** Use alcohol for eight (8) hours after an altercation, or until the Employee completes an alcohol test, whichever is sooner.
- 65.03 a.6.** Refuse to submit to a required alcohol test.
- 65.03 b.** **CONTROLLED SUBSTANCE.**
Employees shall not:
- 65.03 b.1.** Report to work or continue working when using a controlled substance, except when the controlled substance is prescribed by a physician who has advised the Employee the substance does not adversely affect the ability to work.
- 65.03 b.2.** Possess controlled substance while working.
- 65.03 b.3.** Use controlled substance while working.
- 65.03 b.4.** Work after testing positive until a return to work test is administered and results in a negative test.
- 65.03 b.5.** Refuse to submit to a required controlled substance test.
- 65.04** **TEST.**
- 65.04 a.** **REQUIRED TEST.**
- 65.04 a.1.** Prior to reporting for recruit training, the Employee shall be subject to a controlled substance test.
- 65.04 a.2.** After completion of recruit training and prior to reporting to work at the assigned workplace, the Employee shall be subject to a controlled substance test.
- 65.04 a.3.** Employees who are not subject to recruit training shall be subject to a controlled substance test prior to reporting to work at the assigned workplace.
- 65.04 b.** **ALCOHOL TESTING.**
There shall be no pre-employment alcohol testing.
- 65.04 c.** **PROMOTIONS, TEMPORARY ASSIGNMENTS, OR OTHER PERSONNEL CHANGES.**

After compliance with Section 65.04 a. a covered Employee as provided in Section 65.02 g. shall not be subject to alcohol and controlled substance tests as a condition for receiving a promotion, temporary assignment, or other personnel changes.

65.05 **POST-ALTERCATION TEST.**

65.05 a. **REQUIRED TESTS.**

Following an altercation as provided in Section 65.02 a., each Employee shall submit to an alcohol and controlled substance test if required by the Employer.

65.05 b. **ALCOHOL.**

An alcohol test required by Section 65.05 a. shall be administered within two hours but no later than eight (8) hours following the altercation. If the test is not administered within eight (8) hours following the altercation the Employer shall cease attempts to administer an alcohol test.

65.05 c. **CONTROLLED SUBSTANCE.**

A controlled substance test required by Section 65.05 a. shall be administered within thirty-two (32) hours following the altercation. If the test is not administered within thirty-two (32) hours following the altercation the Employer shall cease attempts to administer a controlled substance test.

65.05 d. **MEDICAL ATTENTION AND CARE.**

Nothing in Section 65.05 shall be construed to require the delay of necessary medical attention for injured persons following an altercation or to prohibit an Employee from leaving the scene of an altercation for the period necessary to obtain assistance in responding to the altercation or to obtain necessary emergency medical care.

65.06 **RANDOM TEST.**

65.06 a. **RATE OF TEST.**

65.06 a.1. The Employer shall conduct random alcohol and controlled substance tests of Employees.

65.06 a.2. The tests shall be conducted on an annual basis and the number of alcohol tests conducted each year shall not be less than twenty-five percent (25%) of the average number of Employee positions each selection period.

65.06 a.3. The number of controlled substance tests conducted each year not be less than fifty percent (50%) of the average number of Employee positions each selection period.

65.06 b. **PROBATIONARY PERIOD TEST.**

65.06 b.1. The Employer shall conduct random substance tests of Employees once while on an initial probationary period. The selection of Employees shall be determined by a scientifically valid random number selection method until only one (1) Employee remains not tested. The remaining Employee shall be tested on a date determined at random. Once an Employee has been selected from the probationary testing pool and tested, the Employee's name shall be removed from this pool.

65.06 b.2. Before an Employee is subjected to a controlled substance test as provided in Section 65.06 b.1., the Employee shall agree to sign Exhibit 65.06 b.2. Resignation Agreement, or be discharged, whereby the Employee agrees to resign from employment when the Employee is first tested positive for controlled substance while on an initial probationary period.

65.06 b.3. Employer shall conduct controlled substance tests of Employees once while on a new probationary period. The selection of Employees shall be determined by a scientifically valid random number selection method until only one (1) Employee remains not tested. The remaining Employee shall be tested on a date determined at random. Once an Employee has been selected from the probationary testing pool and tested, the Employee's name shall be removed from the pool. In the event an Employee tests positive the Employee shall be subject to the requirements of an Employee who tests positive.

65.06 b.4. Section 65.06 b.1., Section 65.06 b.2. and Section 65.06 b.3. shall not preclude other applicable tests.

65.06 b.5. Test of the Employees on an initial or new probationary period shall not be included in determining the minimum established in Section 65.06 a.

65.06 c. **SELECTION METHOD.**

65.06 c.1. The selection of Employees shall be determined by a scientifically valid random number selection method.

65.06 c.2. Each Employee within a designated pool shall have an equal chance of being tested each time the selections are made.

65.06 c.3. Random tests shall be conducted as provided in the DOT Rules.

65.06 d. **RESTRICTIONS ON RANDOM ALCOHOL TEST.**

An Employee shall only be randomly tested for alcohol while the Employee is working.

65.06 d.1. Just before the Employee begins to work.

65.06 d.2. Just after the Employee ends work.

65.07 **REASONABLE SUSPICION TEST.**

65.07 a. **TRAINING OF SUPERVISORS.**

65.07 a.1. Supervisors designated to determine whether reasonable suspicion exists must receive at least sixty (60) minutes of training on alcohol misuse, at least sixty (60) minutes of training on controlled substance use and indicators of probable use and misuse.

65.07 a.2. Supervisors shall be subject to training once every five (5) years.

65.07 a.3. The Employer shall provide to the Union a list of trained supervisors, their names, positions, extent and nature of training, date of the last training and the jurisdiction. A current list shall be provided when there are changes to the original list.

65.07 b. **AUTHORITY.**

65.07 b.1. Supervisors who have received the training as provided in Section 65.07 a. may direct an Employee to submit to an alcohol and/or controlled substance test when that supervisor has reasonable suspicion to believe an Employee has violated the prohibitions in Section 65.03 a. 1., 2., 3., 4. and 5. and Section 65.03 b. 1., 2., 3. and 4. except as otherwise provided in the DOT Rules.

65.07 b.2. The reasonable suspicion must be based on a specific, contemporaneous, articulable observation made by the supervisor making the reasonable suspicion determination concerning the appearance, behavior, speech, or body odor of the Employee.

65.07 c. **CONFLICTS.**
The supervisor who makes the determination that reasonable suspicion exists to conduct an alcohol test shall not conduct the alcohol test of the Employees.

65.07 d. **DOCUMENTATION OF REASONABLE SUSPICION.**

65.07 d.1. A written record shall be made of the observation leading to an alcohol or a controlled substance reasonable suspicion test, and signed by the supervisor who made the observation and approved by the Employer within twenty-four (24) hours of the observed behavior or in the case of a controlled substance, before the results of a controlled substance test is released, whichever is earlier.

65.07 d.2. A copy of the record of facts and observations shall be given to the Employee.

65.07 d.3. The behavior-giving rise to reasonable suspicion must be a recognized symptom of impairment of alcohol or controlled substance use and is not reasonably explained as the result of other causes.

65.07 e. **COMPLIANCE.**
A test, which is not valid as provided in the DOT Rules or violates the Employee's rights, shall not be used for discipline.

65.08 **RETURN TO WORK TEST.**

65.08 a. **RETURN TO WORK - ALCOHOL TEST.**

65.08 a.1. An Employee who has violated a prohibition in Section 65.03 a. 1., 3., 4. and 5. who desires to return to work shall be subject to a return to work alcohol test with a result indicating an alcohol concentration of less than 0.02.

65.08 a.2. The Employee shall be subject to a return to work controlled substance test if the Substance Abuse Professional (SAP) recommends the test.

65.08 b. **RETURN TO WORK - CONTROLLED SUBSTANCE TEST.**

65.08 b.1. An Employee who has violated a prohibition in Section 65.03 b.1., Section 65.03 b.3. and Section 65.03 b.4. who desires to return to work shall be subject to a return to work controlled substance test with a verified negative test for controlled substance.

65.08 b.2. An Employee who is subject to a return to work controlled substance test that tests positive for a second (2nd) consecutive time after completion of each SAP's recommended rehabilitation program shall be discharged.

65.08 b.3. The Employee shall be subject to a return to work alcohol test if the SAP recommends the test.

65.09 **FOLLOW UP TEST.**

65.09 a. **EVALUATION.**

65.09 a.1. An Employee who violates a prohibition in Section 65.03 a. 1., 2., 3., 4 and 5. or Section 65.03 b.1., 3. and 4. shall be evaluated by a SAP who shall determine what assistance if any, the Employee needs in resolving problems associated with alcohol misuse and controlled substance use.

65.09 a.2. After the Employee returns to work the Employee shall be subject to unannounced follow up alcohol and controlled substance tests as determined by the SAP.

65.09 b. NUMBER OF TESTS.

65.09 b.1. The number of follow up alcohol and controlled substance tests referred to in Section 65.09 a. shall be set by a SAP and consist of at least six (6) tests in the first twelve (12) months following the Employee's return to work.

65.09 b.2. Follow up tests shall not exceed sixty (60) months from the date of the Employee's return to work.

65.09 b.3. The SAP may terminate the requirement for follow up tests at any time after the first six (6) tests have been administered, if the SAP determines that tests are no longer necessary.

65.09 c. CHOICE OF SAP.
The SAP shall not be an Employee of an Employer.

65.10 TEST.
Alcohol or controlled substance tests shall be as provided in the DOT Rules and Section 65.

65.11 ALCOHOL TEST PROCEDURES.

65.11 a. STANDARDS.

65.11 a.1. Test procedures and practices shall comply with federal regulations and standards.

65.11 a.2. Test procedures shall protect the privacy of the Employee and ensure that the tests are attributable to the correct Employee.

65.11 b. TEST DEVICE.

65.11 b.1. Alcohol tests shall be conducted by a Breath Alcohol Technician (BAT) using an Evidential Breath Test Device (EBT) that is approved by the National Highway Traffic Safety Administration (NHTSA) and placed on its Conforming Products Lists of Breath Measurement Devices.

65.11 b.2. Other tests, which meet the requirements of the Department of Transportation, may be used.

65.11 c. CONFIRMATORY TEST.
An Employee who tests positive on an alcohol test shall be subject to a confirmation test, which shall be administered as provided in the DOT Rules.

65.11 d. COMPLIANCE.
A test, which is not valid as provided in the DOT Rules or violates the

Employee's rights, shall not be used for discipline.

65.12

CONTROLLED SUBSTANCE TEST PROCEDURES.

65.12 a.

STANDARDS.

65.12 a.1.

Test procedures and practices shall comply with federal regulations and standards.

65.12 a.2.

Test procedures shall protect the privacy and dignity of the individual, ensure the integrity of the test process, safeguard the validity of the test through confirmatory test, and ensure that the tests are attributable to the correct Employee.

65.12 b.

TEST DEVICE.

Controlled substance tests shall be by urinalysis and shall be performed by laboratories that are licensed or certified by the State Department of Health or the U.S. Department of Transportation.

65.12 c.

MEDICATIONS (EMPLOYER REQUIREMENT).

The Employee shall inform the Employer of any over-the-counter medication or other therapeutic drug use when the use affects the Employee's ability to work or when the Employee is using a substance, which is prescribed by a physician who has advised the Employee that the substance may adversely affect the Employee's ability to work.

65.12 d.

MEDICAL EXPLANATION.

Prior to making a final decision to verify or report a positive test, the Medical Review Officer (MRO) shall give the Employee an opportunity to discuss the test. If the MRO determines there is a legitimate medical explanation for the positive test, the MRO shall take no further action and report the test as negative.

65.12 e.

SPLIT SAMPLE.

65.12 e.1.

An Employee may request an analysis of the split sample within seventy-two (72) hours of having been informed of a verified positive test.

65.12 e.2.

The Employee may instruct the MRO to have the analysis be at another DHHS-certified laboratory for analysis.

65.12 e.3.

The Employee shall pay for the cost of the test analysis of the split sample, however, the Employee shall be reimbursed if the results of the test is negative.

65.12 f.

COMPLIANCE.

A test, which is not valid as provided in the DOT Rules or violates the

Employee's rights, shall not be used for discipline.

65.13 **EVALUATION, REFERRAL, AND REHABILITATION.**

65.13 a. **NOTICE TO EMPLOYEE.**

An Employee who has engaged in conduct prohibited by Section 65.03 a.1., 3., 4., and 5. or Section 65.03 b.1., 3., and 4. shall be advised by the Employer of the resources available to the Employee in evaluating and resolving problems associated with the misuse of alcohol and use of controlled substance, including the names, address, and telephone numbers of SAP's and counseling and rehabilitation programs.

65.13 b. **EVALUATION AND REFERRAL.**

An Employee who is engaged in conduct prohibited by Section 65.03 a.1., 3., 4., and 5. shall be referred to a SAP for evaluation.

65.13 c. **COST.**

The cost for the SAP services shall be borne by the Employer.

65.13 d. **REHABILITATION.**

The Employee shall be responsible for the cost of the rehabilitation program and treatment required by the program.

65.14 **ADMINISTRATIVE AND CORRECTIVE ACTIONS.**

65.14 a. **COVERAGE.**

65.14 a.1. When tests are required by the Employer, the Employer shall pay for the cost of the tests.

65.14 a.2. The time spent in completing the testing, including travel time, shall be considered as time worked.

65.14 a.3. When tests are required as the result of a rehabilitation program, or the return to work test, the time spent in completing the tests, including travel time, shall not be considered as time worked.

65.14 b. **CALL BACK NOTICE.**

65.14 b.1. An Employee on non work status who is called back to work shall report to the Employer the consumption of alcohol within the previous four (4) hours or have reason to believe that the alcohol concentration level would be 0.02 or greater.

65.14 b.2. The Employee shall not be offered work and shall not be required to submit to an alcohol test or be subject to disciplinary action.

65.14 c. COSTS.

Except as otherwise provided in Section 65, the cost of the alcohol and controlled substance tests shall be borne by the Employer.

65.14 d. REMOVAL FROM WORK.

65.14 d.1. An Employee who has tested positive as a result of an alcohol test with an alcohol concentration of 0.02 or greater but less than 0.04 shall be removed immediately from work and prohibited from work for at least twenty four (24) hours.

65.14 d.2. An Employee with a positive alcohol test of 0.04 or greater or a positive controlled substance test shall be removed immediately from work.

65.14 d.3. The Employee shall be scheduled for an immediate evaluation by a SAP.

65.14 d.4. The SAP shall complete the evaluation within a reasonable period of time after the Employee has been removed from work.

65.14 d.5. Before returning to work the Employee shall be subject to the SAP's recommended rehabilitation program and take a return to work test as provided in Section 65.08 a. and Section 65.08 b.

65.14 d.6. An Employee with a positive test shall be immediately placed on sick leave, vacation leave, compensatory time or authorized leave without pay as determined by the Employee.

65.15 DISCIPLINE, RESIGNATION AND LAST CHANCE AGREEMENTS.

65.15 a. NOTICE OF TEST RESULTS.

An Employee who tests positive for alcohol or controlled substance shall be given written notice of the test with a copy of the documents to verify the chain of custody.

65.15 b. RESERVED.

65.15 c. FIRST POSITIVE CONTROLLED SUBSTANCE TEST.

65.15 c.1. An Employee who tests positive for controlled substance for the first time shall be discharged unless the Employee agrees to sign the Exhibit 65.15 d. Controlled Substance Last Chance Agreement, whereby the Employee agrees to resign from employment in the event of a second positive controlled substance test occurring within two (2) years of the first positive controlled substance test exclusive of time from the date the Employee has been removed from performing safety sensitive functions, including time spent in evaluation and treatment, until the date the Employee has returned to performing safety

UNIT 10 AGREEMENT – July 1, 2013 to June 30, 2017

sensitive functions following a negative return to work test(s).

65.15 c.2. When the Employee signs Exhibit 65.15 d. Controlled Substance Last Chance Agreement, the Employee shall be suspended for twenty (20) workdays instead of being discharged.

65.15 c.3. The Employee shall be referred to the SAP and must comply with the SAP's recommended rehabilitation program.

65.15 d. **SECOND POSITIVE CONTROLLED SUBSTANCE TEST.**
An Employee who tests positive for a controlled substance for a second time within two (2) years of the first positive controlled substance test exclusive of time from the date the Employee has been removed from performing safety sensitive functions, including time spent in evaluation and treatment, until the date the Employee has returned to performing safety sensitive functions following a negative return to work test(s) shall be deemed to have resigned as provided in Exhibit 65.15 d. Controlled Substance Last Chance Agreement.

65.15 e. **RESERVED.**

65.15 f. **FIRST POSITIVE ALCOHOL TEST.**

65.15 f.1. An Employee who tests positive for alcohol for first time shall be discharged unless the Employee agrees to sign Exhibit 65.15 g. Alcohol Last Chance Agreement, whereby the Employee agrees to resign from employment in the event of a second positive alcohol test.

65.15 f.2. When the Employee signs Exhibit 65.15 g. Alcohol Last Chance Agreement, the Employee shall be suspended for twenty (20) workdays.

65.15 g. **SECOND POSITIVE ALCOHOL TEST.**
An Employee who tests positive for alcohol for a second time within two (2) years of the first positive alcohol test exclusive of time from the date the Employee has been removed from work, including time spent in evaluation and treatment, until the date the Employee has returned to work following a negative return to work test(s) shall be deemed to have resigned as provided in Exhibit 65.15 g. Alcohol Last Chance Agreement.

65.15 h. **REHABILITATION PROGRAM TEST.**
Positive alcohol and controlled substance tests that occur during the SAP's recommended rehabilitation program shall not be used to make a determination as provided in Section 65.15 c., d., e., f. and g.

65.15 i. **REFUSAL TO TEST.**

65.15 i.1. An Employee who refuses to submit to a required alcohol or controlled

UNIT 10 AGREEMENT – July 1, 2013 to June 30, 2017

substance test in violation of Section 65.03 a. 6. or Section 65.03 b. 5. shall be discharged.

65.15 i.2. A refusal includes, but is not limited to, situations in which an Employee provides an adulterated and/or substituted specimen as defined in the Department of Health and Human Services (HHS) issued NLCP Program Document (PD) #035 for an alcohol or controlled substance test shall constitute a refusal to test, in violation of Section 65.03 a. 6. or Section 65.03 b. 5. and the Employee shall be discharged.

65.15 j. **REFUSAL TO COMPLETE THE REHABILITATION PROGRAM.**
An Employee who refuses to complete the SAP's recommended rehabilitation program shall be discharged.

65.15 k. **POST-ALTERCATION TEST.**
An Employee who is required to submit to an alcohol and controlled substance test as provided in 65.05 a. and tests positive for alcohol or controlled substance shall be disciplined as provided in Section 11.01 of the Unit 10 Agreement.

65.16 **NOTICE AND INFORMATION.**

65.16 a. **EDUCATIONAL MATERIALS.**
The Employer shall provide detailed educational materials to a covered Employee that explains federal regulations and Section 65. At a minimum, the materials shall include the following:

65.16 a.1. The categories of Employees who are subject to the regulations.

65.16 a.2. Specific information on conduct that is prohibited.

65.16 a.3. The circumstances under which an Employee may be subject to an alcohol and controlled substance test.

65.16 a.4. The procedures that will be used to test for alcohol or controlled substance.

65.16 a.5. The requirement that an Employee submit to a test.

65.16 a.6. An explanation of what constitutes a refusal to submit to a test.

65.16 a.7. The consequences for an Employee found to have violated Section 65.

65.16 a.8. Information on the effects of alcohol and controlled substance.

65.16 a.9. The Employer designee to be contacted for questions or additional information.

65.16 b. **SIGNED STATEMENT.**

UNIT 10 AGREEMENT – July 1, 2013 to June 30, 2017

The Employer shall obtain a signed statement from each covered Employee that indicates that each covered Employee has been advised of the requirements of Section 65 and has received educational materials as provided in Section 65.16 a. prior to the beginning of the test.

65.16 c. **INFORMATION.**

The Employer shall transmit annually to the Union, without cost, by the end of March of each year, the following:

65.16 c.1. A list showing a statistical account of the alcohol and controlled substance test results conducted as provided in Section 65, which shall indicate the number of negative and positive tests and the dates and numbers of Employees tested in the previous one (1) year period for each form of test.

65.16 c.2. The names and addresses of the Laboratories hired to do alcohol and controlled substance tests.

65.16 c.3. The names and addresses of the Substance Abuse Professionals (SAP) and a copy of the certification.

65.16 c.4. The names and addresses of the Medical Review Officer (MRO) and a copy of the certification.

65.16 c.5. The names of the supervisors who are authorized to recommend a reasonable suspicion test.

65.16 c.6. The names of the Employer designee to provide information to the Employees as provided in Section 65.

65.16 c.7. A list of Employees, positions, position numbers, department and telephone numbers at work. A current list shall be provided when there are changes to the original list.

65.17 **INFORMATION AND RECORDS.**

65.17 a. **CONFIDENTIALITY.**

65.17 a.1. The Employer and the Union shall comply with Section 382.401 through 382.413 of the DOT Rules.

65.17 a.2. Information and records pertaining to the Employee shall be released after receipt of a written request for information from the Employee as provided in the DOT Rules.

65.17 b. **MAINTENANCE AND DESTRUCTION.**

UNIT 10 AGREEMENT – July 1, 2013 to June 30, 2017

65.17 b.1. Information and records maintained pertaining to the Employee shall be maintained in a secure location except as otherwise provided by the DOT Rules.

65.17 b.2. The information and records shall be destroyed as provided in the DOT Rules.

65.17 c. **SUBPOENAS.**

The Employer shall make every reasonable effort to notify the Employee and the Union of the receipt of a subpoena for information concerning an Employee's alcohol and/or controlled substance tests.

65.18 **INDEMNIFICATION AND DEFENSE.**

65.18 a. The Employer shall be responsible for defending statutory and constitutional challenges to the enforceability of Section 65.

65.18 b. The Employer shall defend the Union against any claim or action arising out of the Employer's administration or implementation of the Omnibus Transportation Employee Testing Act of 1991 and the U.S. Department of Transportation's rules and regulations adopted as provided in the Act.

65.18 c. Subject to the recommendation of the Employer and the express approval of the appropriate legislative body, the Employer shall pay damages awarded against the Union because of a claim or action.

SECTION 66. ENTIRETY AND MODIFICATION.

- 66.01** All sections contained in this Agreement constitute the entire Agreement between the parties and supersedes all previous communications, representations or agreements, either verbal or written, between the parties with respect to the subject matters herein. Negotiations shall not be reopened for the duration of this Agreement except by mutual consent.

SECTION 67. SAVINGS.

- 67.01** In the event a section(s) of this Agreement is determined to be invalid by reason of existing legislation or by a decree of a court of competent jurisdiction, the invalidation of the section(s) of this Agreement shall not invalidate the section(s) not invalidated.

SECTION 68. DURATION.

68.01 **EFFECTIVE DATES.**

The Unit 10 Agreement shall be effective July 1, 2013 and shall remain in effect to and including June 30, 2017. It shall be renewed thereafter in accordance with statutes unless either party hereto gives written notice to the other party of its desire to modify, amend, or terminate the Unit 10 Agreement.

68.02 **NOTICES AND PROPOSALS.**

Notices and proposals shall be in writing and shall be presented to the other party between June 15 and June 30, 2016. When the notice is given, negotiations for a new Unit 10 Agreement shall commence on a mutually agreeable date following the exchange of written proposals.

SIGNATURE PAGE

STATE OF HAWAII

By: Neil Abernethy
Its Governor
Neil D. J.
Bunabaki

JUDICIARY

By: Lodney G. Inail
Its Administrative Director
Don Wulkeberg

HAWAII HEALTH SYSTEMS CORPORATION

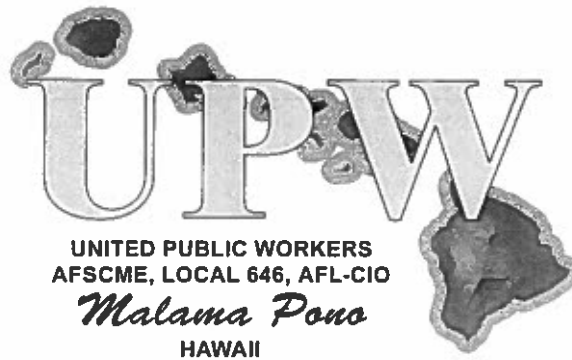
By: Alice M. Hall
Its President & CEO
Andy A. Drury

CITY AND COUNTY OF HONOLULU

By: Jim. C.
Its Mayor
Carolee C. Kato

UNITED PUBLIC WORKERS,
AFSCME, LOCAL 646, AFL-CIO

By: Raymond H. Coleman
Its State Director
C. J. J.
John F. J.
Pat J.
D. Madden
Emma D.
Kevin D. Jensen
W. J. L.
L. J. L.
Julie Santiago
Dylan M.
Julia A.



April 7, 2008

Jonathan Taum
215 Kapualani Street
Hilo, HI 96720

Dear Mr. Taum:

Enclosed is a copy of the charges you filed against UPW State Director Dayton M. Nakanelua.

In accordance with Section 7, Article X, of the AFSCME International Constitution, the trial body will be the UPW State Executive Board and the presiding officer will be the UPW State President Steven DeCosta.

As the charging party and in accordance with Article X of the AFSCME International Constitution, you are being notified that the trial of UPW State Director Nakanelua is scheduled as follows:

DATE: April 26, 2008
TIME: 10:00 a.m.
PLACE: UPW Hawaii Division Office

Please feel free to contact me at 808-847-2631 if you have any questions.

Sincerely,

Gwendolyn P. Rowland
State Secretary-Treasurer

Enclosures

HEADQUARTERS: 1426 North School Street, Honolulu, Hawaii 96817 (808) 847-2631
HAWAII: 362 East Lanikaula Street, Hilo, Hawaii 96720 (808) 961-3424
MAUI: 841 Kolu Street, Wailuku, Hawaii 96793 (808) 244-0815 **TAUM000057**
KAUAI: 4211 Rice Street, Lihue, Hawaii 96766 (808) 245-2412

EXHIBIT 3

To: UPW State Executive Board

10/23/07

On October 8 & 9, 2007 a joint meeting was held at the Public Safety Department. This meeting consisted of Chief Stewards from each correctional facility of each island, Dayton Nakanelua and UPW staff members, along with the Director of Public Safety Clayton Frank and his staff. Director Clayton Frank briefly spoke about the budget of the department and stated that corrections were in a great deficit due to overtime. Discussions about problems and solutions were given from both sides. On the final day, a replacement for the original sick leave pattern program was discussed. The following program was discussed:

This program was designed to target only those employees with no sick leave. If an employee calls in sick and has zero sick leave, even though that employee has accumulated vacation and/or comp time, that employee needs to bring in a doctor's note to verify the sickness. This note is needed for any amount of days. If this employee doesn't bring in a doctor's note, then this employee would be charged with unauthorized leave without pay, drop a day in seniority, and get written up. If the employee produces a doctor's note then the employee shall have the option to roll over vacation, comp time, or leave without pay.

It was brought up in that meeting that this new program greatly changes our contract. First it changes the old sick leave pattern. Also presently, in 37.04b it states, "An Employee who provides notification and is informed that the Employee does not have accumulated sick leave, the Employee shall have the option to use accumulated vacation leave, compensatory time, or authorized leave without pay." By accepting this proposal this would eliminate the members right to automatically rollover. In order to roll over leave in this proposal you would have to bring in a doctor's note. This new proposal is very punitive in that the member receives unauthorized leave without pay even though the member may have a great number of vacation or comp time.

Dayton Nakanelua, Director Clayton Frank along with the meetings facilitator wanted to come to an agreement for this new program with the starting date of December 1, 2007. It was brought to Dayton and Chip's attention that according to UPW Constitution Bill of Rights #7, the members had the right to vote on this change and that we did not have the authority here in this meeting to make any changes to the contract.

United Public Workers

AFSCME, Local 646, AFL-CIO

Constitution

Bill of Rights for Union Members

7. Members shall have the right to full participation, through discussion and vote, in the decision-making processes of the union, and to pertinent information needed for the exercise of this right. This right shall specifically include decisions concerning the acceptance or rejection of collective bargaining contracts, memoranda of understanding, or any other agreements affecting their wages, hours, or other terms and conditions of employment. All members shall have an equal right to vote and each vote cast shall be of equal weight.

TAUM000058

EXHIBIT 3

AFSCME International Constitution
Bill of Rights for Union Members

7. Members shall have the right to full participation, through discussion and vote, in the decision-making processes of the union, and to pertinent information needed for the exercise of this right. This right shall specifically include decisions concerning the acceptance or rejection of collective bargaining contracts, memoranda of understanding, or any other agreements affecting their wages, hours, or other terms and conditions of employment. All members shall have an equal right to vote and each vote cast shall be of equal weight.

Chip responded that AFSCME Constitution allows them to make an exception to that part of the rule and so does Chapter 89 Hawaii Revised Statutes. Dayton Nakanelua also added that they have always done this in the past and continued to say that if he is found at 2009 Convention to be not good as a Director, then you can "vote Nakanelua out". It was also repeated by Chip and Dayton that we as Chief Stewards are voted in to be leaders to make these kinds of decisions for the members. No other discussion was made at this meeting concerning this matter.

These violations were brought up to the Hawaii Division Executive Board on October 10, 2007. The attached letter was signed by all members of the Board and sent to Mr. Dayton Nakanelua. This letter requested copies of all memorandum of understandings and/or agreement and also stated that the agreement made on October 8 & 9 with the Department of Public Safety not be made without membership votes.

On October 15, 2007, Mr. Dayton Nakanelua was contacted by phone concerning the mentioned violations. Mr. Nakanelua continually insists that AFSCME recognizes that there are exceptions when it comes to #7 of the constitution, and that the Director has the authority to make changes between contracts. A meeting is to be scheduled on October 23, 2007 at 5:00pm at the Hawaii UPW hall. During this meeting, we as members are hoping Mr. Nakanelua and his staff makes things right, by providing the membership copies of any existing Memorandums of Understanding and/or Agreements that were made without membership votes. Those MOA's or MOU's or any other agreements then needs to go back to the membership to vote as stated in the Constitution.

If you have received this letter, then there has been no resolution at this meeting. It is intended then that Mr. Dayton Nakanelua and staff affiliated with these actions be in violation of the following:

Article X-Section 2

- A. Violation of any provision of this Constitution or of any officially adopted and approved constitution of a subordinate body to which the member being accused is subject.
- D. Acting in collusion with management to the detriment of the welfare of the union or its membership.
- G. Willful violation of a legally negotiated and approved collective bargaining agreement.
- H. Using the name of the Federation or of a subordinate body in an unauthorized manner or for an unauthorized purpose.

Sincerely, UPW Members

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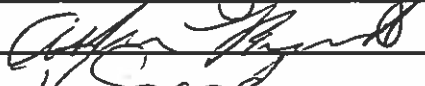
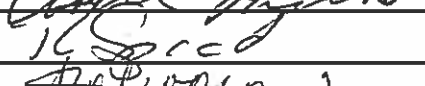
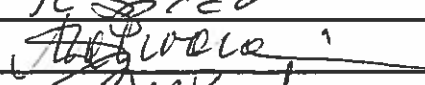
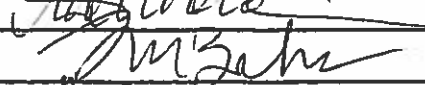
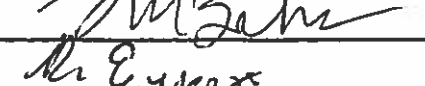
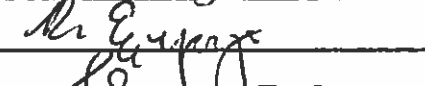
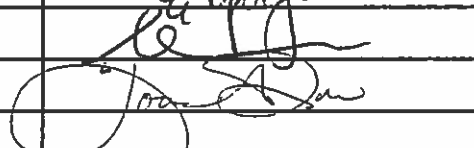
By Signature, we the members of UPW vote NO to the new proposed sick leave program
and stand in agreement to the violation charges made against Mr. Dayton Nakanelua
and the staff affiliated with these actions

	PRINTED NAME	SIGNATURE	WORKPLACE
1	Jonathan Taum	Jonathan Taum	HCCC
-2	MITSUO NAKAMOTO		HCCC
-3	YOUNG YU		HCCC
-4	MAHOE CRAMER		HCCC
-5	CRUMI Salvin 2 G		HCCC
6	Jon A. Salzman	Jon A. Salzman	HCCC
7	JULIAN LEE	Julian Lee	HCCC
-8	MICHAEL Lee	Michael Lee	HCCC
9	DOMINIC POCHIED	Dominic Pochied	HCCC
10	JAMES HERRAS	James Herras	HCCC
11	BRAD J. HATH	Brad J. Hath	HCCC
12	K. Mays	K. Mays	HCCC
13	RANDY WATKINS	Randy Watkins	HCCC
14	MAURICE FORD	Maurice Ford	HCCC
15	GARY, TAYLOR	Gary Taylor	HCCC
16	WAYNE YONEMORI	Wayne Yonemori	HCCC
17	Joseph Nakoa	Joseph Nakoa	HCCC
18	DAYTON KASHIMA	Dayton Kashima	HCCC
19	ALLEN BATTIST	Allen Battist	HCCC
20	NAVARRO, NOEL	Noel Navarro	HCCC
21	FERN K. Whigleas	Fern K. Whigleas	HCCC
22	LONNIE MEYER	Lonnie Meyer	HCCC
-23	Douglas Park	Douglas Park	HCCC
-24	ARDEN COSTA	Arden Costa	HCCC
-25	ACCO III RICHARD Y OTA	Richard Y. Ota	HCCC (ACCO III)
-26	ROBIN ARIMA	Robin Arima	HCCC
27	RENNICK KEALA	Rennick Keala	HCCC ACCO III
28	EDWARD OLIVE	Edward Olive	HCCC ACCO III
-29	Kay K. Papalima	Kay K. Papalima	HCCC ACCO III
30	GARY KOBAYASHI	Gary Kobayashi	HCCC

TAUM000060

	PRINTED NAME	SIGNATURE	WORKPLACE	
31	David Reyno	David Reyno	HCC	
32	Maui Ahuna	Maui Ahuna	H.C.C.C.	
33	Judy Rileen	Judy Rileen	HCC	10-18-07
34	Roby Grider	Roby Grider	H.C.C.C.	
35	Q. Hite	Q. Hite	HCC	
36	Maquette Amara	Maquette Amara	H.C.C.C.	10/18/07
37	Doreen K. Lee	Doreen K. Lee	HCC	
38	Juan Bustamante	Juan Bustamante	HCC	
39	Lester Luahiwa	Lester Luahiwa	HCC	
40	Stafford UEMURA	Stafford UEMURA	H.C.C.C.	10-18-07
41	Silve John W.	Silve John W.	HCC	10-18-07
42	EDDIE ANCUTA	EDDIE ANCUTA	HCC	10/18/07
43	Kumalani Borling	Kumalani Borling	HCC	10.18.07
44	Kimball F. Alia	Kimball F. Alia	H.C.C.C.	10/18/07
45	GLEN P. KAHANA	GLEN P. KAHANA	H.C.C.C.	10/18/07
46	Donnell Adams	Donnell Adams	HCC	10/18/07
47	JOHN HARRY K. WATKINS	JOHN HARRY K. WATKINS	HCC	07/18/18
48	JOLIE ANN L. SALAS	JOLIE ANN L. SALAS	HCC	10/18/07
49	JAMES LEVI MAKAI-IO	JAMES LEVI MAKAI-IO	HCC 10/18/07	
50	CARL KAHAWAI	CARL KAHAWAI	HCC 10/18-07	
51	DENNIS K. TAN	DENNIS K. TAN	HCC 10/20/07	
52	Lawrence Lopes	Lawrence Lopes	HCC 10-20-07	
53	Quincy Pacheco	Quincy Pacheco	HCC 10/20/07	
54	Brian Mula	Brian Mula	HCC 10-20-07	
55	William Sumner	William Sumner	HCC 10-20-07	
56	FRANK OMAWA JR	FRANK OMAWA JR	HCC 10-20-07	
57	JASON FERREIRA SR.	JASON FERREIRA SR.	HCC 10/20/07	
58	Lisa Tolentino	Lisa Tolentino	HCC 10/20/07	
59	MAURITIA MINNEN	MAURITIA MINNEN	HCC 10/20/07	
60	Isabel WLOBIGUSH	Isabel WLOBIGUSH	HCC 10/20/07	
61	Bernie Abella	Bernie Abella	HCC 10/20/07	
62	KATHIKAPU K. FRANCISCO	KATHIKAPU K. FRANCISCO	HCC 10/20/07	
63	IGNACIO PEPE JR	IGNACIO PEPE JR	HCC 10/20/07	
64	DANAMICHAEL OUTRO	DANAMICHAEL OUTRO	HCC 10/20/07	
65	Mark Stevens	Mark Stevens	HCC 10/20/07	

TAUM000061

	PRINTED NAME	SIGNATURE	WORKPLACE
66	Roland K. LEONG		HCC
67	Lowery, Mark		Hccc
68	BROAD, ADAM		H.e.e.e.
69	SPEED Richard		H.C.C.C.
70	Kahōōnei, Alvina		HCCC
71	BAKER FRANK M		HCC
72	Espino, Rielay		Hccc
73	Kawlin, ALBERT		Hccc
74	Dign, LORRAINE Lorraine		Hccc
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Dayton Nakanelua
UPW State Director
Oahu, Hawaii


Dear: Mr. Nakanelua

RE: Alleged violation of the AFSCME Constitution and the Hawaii UPW Constitution

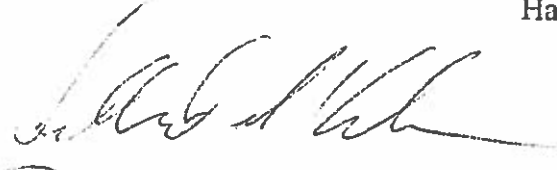
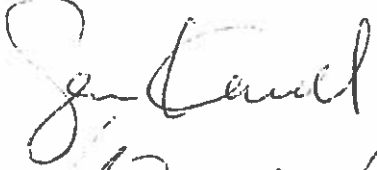

We the Hawaii Division Executive Board is requesting the following information to review:

1. All copies of any Supplemental Agreement that affect Unit 01 & 10 dating back to 1990 in the State of Hawaii and County of Hawaii Jurisdiction.
2. All copies of ratification or implementation and /or Mutual Agreement of the Unit 10 Department Public Safety, "Standard of Conduct."

We are requesting that you cease this alleged practices even as you may have done it before. We are only making sure that we follow all the rule and all our member's constitutional rights. We humbly ask that you review the information provided to you in this packet and make the right decision on this matter. We are also asking you not to allow PSD to implement the MOA's ,MOU's and/or Supplemental Agreements we discussed on October 8&9, 2007 on Oahu.


Jonathan Taum
Hawaii Div Tres.


Approved by Elroy Kelii
Hawaii Division Vice President

TAUM000063

EXHIBIT 3



Home > Publications > AFSCME Governance > AFSCME Constitution > Bill of Rights for Union Members

Bill of Rights for Union Members

Table of Contents



Find
AFSCME
in your state

Select a State

1. No person otherwise eligible for membership in this union shall be denied membership, on a basis of unqualified equality, because of race, creed, color, national origin, sex, age, sexual orientation, disability, or political belief.
2. Members shall suffer no impairment of freedom of speech concerning the operations of this union. Active discussion of union affairs shall be encouraged and protected within this organization.
3. Members shall have the right to conduct the internal affairs of the union free from employer domination.
4. Members shall have the right to fair and democratic elections, at all levels of the union. This includes due notice of nominations and elections, equal opportunity for competing candidates, and proper election procedures which shall be constitutionally specified.
5. Members shall have an equal right to run for and hold office, subject only to constitutionally specified qualifications, uniformly applied.
6. Members shall have the right to a full and clear accounting of all union funds at all levels. Such accounting shall include, but not be limited to, periodic reports to the membership by the appropriate fiscal officers and periodic audits by officers elected for that purpose or by independent auditors not otherwise connected with the union.
7. Members shall have the right to full participation, through discussion and vote, in the decisionmaking processes of the union, and to pertinent information needed for the exercise of this right. This right shall specifically include decisions concerning the acceptance or rejection of collective bargaining contracts, memoranda of understanding, or any other agreements affecting their wages, hours, or other terms and conditions of employment. All members shall have an equal right to vote and each vote cast shall be of equal weight.
8. Charges against a member or officer shall be specific and shall be only on grounds provided in this Constitution. Accused members or officers shall have the right to a fair trial with strict adherence to due process. The accused shall be considered innocent until proven guilty.

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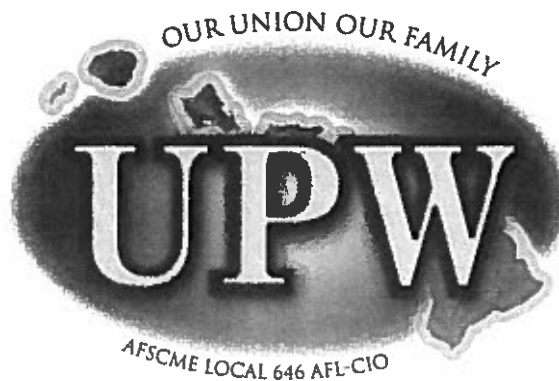
8. Charges against a member or officer shall be specific and shall be only on grounds provided in this Constitution. Accused members or officers shall have the right to fair trial with strict adherence to due process. The accused shall be considered innocent until proven guilty.

ARTICLE 1

AIMS AND PRINCIPLES

We, the men and women working under the jurisdiction of this Union in the State of Hawaii, in order to build and maintain a strong organization and provide for the defense of our common interests, promote the welfare of our members and families, uphold the rights and dignity of our labor and its organized expression, have determined that we shall be guided by the following principles:

- a. An injury to one is an injury to all.
- b. The right to be treated in a decent and respectful manner by the Employer.
- c. To organize the unorganized workers within our jurisdiction so as to protect our gains as well as to extend them to others.
- d. To encourage the organization of all labor so as to help raise the living standards of all wage earners.
- e. To oppose all violations of democratic practice whether they be racial, religious, or political, thus assuring the rights guaranteed by the American Constitution to all.
- f. To encourage the fullest participation in the democratic processes of our community and our nation in order to help assure honest government responsible to the people. To support and encourage the members' interest in world as well as national and local events, since events throughout the world affect the people of Hawaii.
- g. Basing ourselves on these principles, we are pledged to work, individually and collectively in pursuit of these aims:
 - 1) To promote the best interests of our members by organizing all workers eligible for membership in our Union.



May 7, 2008

Jonathan Taum
215 Kapualani Street
Hilo, Hawaii 96720

RE: Findings, Decision and Orders of the UPW Trial Body
Concerning Jonathan Taum's Motion to Withdraw the
Charges Against UPW State Director, dated May 5, 2008

Dear Brother Taum:

As you will recall, the UPW Trial Body was convened on April 26, 2008 to hear and adjudicate, in a trial, the charges that you filed against the UPW State Director.

Enclosed herewith is a copy of the Trial Body's Findings, Decision and Order that were reached in the trial referred to above, including the decisions reached on the motions filed by you and the UPW State Director, in this trial.

As you will note from the enclosed Trial Body's decision, etc., the Trial Body accepted your permanent resignation from your position as a UPW Chief Steward. Enclosed herewith, is a document which verifies your permanent resignation from your Chief Steward's position. The Trial Body has ordered that you must sign and deliver to Ms. Martti Fernandez, at her place of business, at the UPW Honolulu, Hawaii headquarters located at: 1426 North School Street, Honolulu, Hawaii 96817, the enclosed written resignation by no later than seven (7) calendar days after you receive this letter and its enclosures.

The Trial Body has granted your above stated motion, on the condition that you write and deliver a formal apology letter to UPW State Director Dayton M. Nakanelua, in which you apologize for bringing false charges against State Director Nakanelua. See the enclosed document for complete details as to what

HEADQUARTERS - 1426 North School Street ♦ Honolulu, Hawaii 96817-1914 ♦ Phone: (808) 847-2631
HAWAII - 362 East Lanikaula Street ♦ Hilo, Hawaii 96720-4336 ♦ Phone: (808) 961-3424
KAUAI - 4211 Rice Street ♦ Lihue, Hawaii 96766-1325 ♦ Phone: (808) 245-2412
MAUI - 841 Kolu Street ♦ Wailuku, Hawaii 96793-1426 ♦ Phone: (808) 244-0815
1-866-454-4166 (Toll Free, Molokai/Lanai only)

TAUM000066

Jonathan Taum
May 7, 2008
Page 2

this letter must state. This apology letter must also be received by Ms. Fernandez at her above stated office by the deadline stated above. This signed apology letter will be printed in the Malama Pono.

Failure of you to do any of the things stated above, by the above mentioned deadline, will result in the Trial Body continuing the penalty phase of its trial, with the probable outcome being that you and seventy two of the other signers of the petition that was circulated by you (everyone else except Jody Rivera), may be subject to additional sanctions, including but not limited to, monetary penalties for the costs related to the trial.

Sincerely,



Steven L. DeCosta

Enclosure

c: Charging Parties (w/enclosures)
UPW Trial Body (w/enclosures)

**BEFORE THE UNITED PUBLIC WORKERS
AFSCME LOCAL 646 AFL-CIO
TRIAL BODY**

In the Matter of UPW Member)
JONATHAN TAUM and SEVENTY-)
THREE (73) OTHER BARGAINING)
UNIT TEN UPW MEMBERS,)
)
Charging Parties,)
)
and)
)
UPW STATE DIRECTOR)
DAYTON M. NAKANELUA,)
)
Respondent.)

UNITED PUBLIC WORKERS, AFSCME LOCAL 646, AFL-CIO
TRIAL BODY'S FINDINGS, DECISION AND ORDER

SUMMARY

The Trial Body accepted UPW member Jonathan Taum's (hereinafter, "Charging Party Taum") admission that the charges of violation of AFSCME Constitution by failure to ratify agreement, collusion with management, etc., that were made against UPW State Director Dayton M. Nakanelua (hereinafter, "Respondent Nakanelua") were false charges. UPW State Director Nakanelua is innocent of all charges.

It was determined that all of the charges against Respondent Nakanelua were brought in bad faith.

Charging Party Taum's permanent resignation from his position as a Chief Steward, was accepted. Charging Party Taum was ordered not to seek any UPW office of any kind as long as he is a UPW member.

It was ordered that if Charging Party Taum violated any of the above, then the Trial Body shall continue the penalty phase of the Trial, and pursue severe monetary penalties against Charging Parties Taum and all of the others who signed the petition/charges circulated by Charging Party Taum, except for Jody Rivera. These severe monetary penalties include, but are not limited to, the cost of: airfare, hotel room, dining and attorney's fees for forty-five (45) or more: Trial Body members; their counsel; Respondent Nakanelua and his defense team, including counsel; and court reporter fees, etc.

FINDINGS

On April 26, 2008, upon proper notice, and there being a quorum present, the United Public Workers, AFSCME Local 646, AFL-CIO (hereinafter referred to as the "UPW") Trial Body was duly convened, and conducted a trial at which the charges filed by Charging Party Taum and seventy-three (73) other UPW Bargaining Unit 10 members, were heard and adjudicated. The Trial Body's Presiding Officer was UPW State President Steven DeCosta, and the Trial Body's Secretary was UPW State Secretary/Treasurer Gwendolyn P. Rowland.

Respondent Nakanelua, in his capacity as the UPW State Director was the Accused Party.

The trial commenced at 10:35 a.m. on April 26, 2008, at which time Charging Party Taum and six (6) of the seventy-three (73) other Charging Parties were present; and Respondent Nakanelua (Accused Party), along with his chief counsel, Clifford Uwaine, and other defense counsel, were present.

Charging Party Taum, although having no written documentation to this effect, stated that he was authorized to serve as counsel for the seventy-three (73) other Charging Parties.

UPW Bargaining Unit 10 member Jody Rivera, one of the Charging Parties, stated that he was asked by Charging Party Taum to merely sign a petition, and that Charging Party Taum did not inform him that by signing the petition that he was bringing charges against Respondent Nakanelua.

Charging Party Rivera stated that he never wanted to bring charges against Respondent Nakanelua. Charging Party Rivera stated that in view of the foregoing, he moved to withdraw any charges that he had unwittingly filed against Respondent Nakanelua. In response to Charging Party Rivera's motion to withdraw, Respondent Nakanelua stated that he had no objection.

From the evidence that was presented, it appeared to the Presiding Officer that Charging Party Taum had only circulated a petition for

Rivera's signature, and subsequently attached a separate sheet of paper which contained charges against Respondent Nakanelua. When this separate sheet was attached to the petition, it appeared that Rivera signed the petition, with the UPW members who were bringing the charges.

Since it appeared that Charging Party Rivera was tricked or deceived into filing charges against Respondent Nakanelua, and there being no objection to said motion to withdraw by Respondent Nakanelua, the Presiding Officer granted the Charging Party Rivera's motion to withdraw his charges.

The background information in the charges and the response to the charges indicated that UPW State Director Nakanelua was approached by the administration of the State of Hawaii Department of Public Safety, hereinafter referred to as "PSD," and asked to enter into negotiations to amend the Bargaining Unit 10 Collective Agreement to enter into a Memorandum of Understanding, hereinafter referred to as the "MOU," to implement a program to preserve the dwindling PSD overtime budget legislative appropriation, in order to prevent a cancellation of all PSD overtime work.

Respondent Nakanelua and a UPW bargaining team, consisting of a UPW steward from each of the eight (8) correctional facilities, which included Charging Party Taum, bargained with PSD management and agreed

to the MOU terms. Thereafter, Respondent Nakanelua signed the MOU, which became in effect upon its signing, since ratification was not required by law, and requiring ratification where none was required by law, would constitute a refusal to bargain in good faith, in violation of Hawaii Revised Statutes, hereinafter referred to as "HRS," § 89-13(b)(2), see, Zayre Dept. Stores, 289 NLRB 1183, 131 LRRM 1238 (1988). A demand for ratification would also violate the past bargaining practices of the UPW and the Hawaii State and County Public Employers.

The charges against Respondent Nakanelua alleged that by, negotiating the sick leave/overtime issue embodied in the MOA, by signing said MOU, and by not having said MOU ratified by Bargaining Unit 10 members before signing it, Respondent Nakanelua violated the following provisions of Article X, Section 2 of the AFSCME Constitution:

- A. Violation of any provision of this Constitution or of any officially adopted and approved constitution of a subordinate body to which the member being accused is subject.
- D. Acting in collusion with management to the detriment of the welfare of the union or its membership.
- G. Willful violation of a legally negotiated and approved collective bargaining agreement.
- H. Using the name of the Federation or of a subordinate body in an unauthorized manner or for an unauthorized purpose.

During the Trial, Charging Party Taum admitted on cross-examination that:

1. He freely and voluntarily participated as a UPW bargaining team member in negotiations with the PSD management on the terms of the MOU, including the October 9, 2007 negotiations session at which the final issues for the MOU were agreed upon.

2. That the UPW's need to comply with the Hawaii public sector collective bargaining law set forth in HRS, Chapter 89, supersedes the UPW's need to comply with the ratification of agreements provision in the AFSCME Constitution.

3. He previously raised the issue of ratification of the MOU with Respondent Nakanelua, was satisfied with Respondent Nakanelua's explanation as to why compliance with HRS, Chapter 89 superseded the ratification requirement in the AFSCME Constitution.

4. After this conversation with Respondent Nakanelua, he shook Respondent Nakanelua's hand and promised that he would not file charges against Respondent Nakanelua over the issue of ratification of the MOU.

5. On a subsequent occasion, he again promised Respondent Nakanelua that he would not pursue charges on the issue of ratification of the MOU.

6. In spite of the fact that he had promised Respondent Nakanelua twice that he would not file charges on the issue of the ratification

of the MOU, he filed the current charges regarding the ratification of the MOU.

7. Charging Party Taum admitted that he was merely soliciting signatures for a petition, when in fact he was soliciting signatures for charges against the Respondent State Director Nakanelua.

At what appeared to be the end of his case in chief, Charging Party Taum orally made a motion to the Trial Body, to allow him as counsel for all remaining Charging Parties, to withdraw the aforesaid four (4) charges against Respondent Nakanelua, with prejudice (a final, irrevocable withdrawal of these charges), under the following conditions: (1) that he admits that Respondent Nakanelua did not collude with the Employer in entering into the MOU; (2) that once any MOU is agreed upon by the UPW and management, said MOU does not have to be ratified by UPW members in order for the UPW, by its State Director, to execute the MOU; (3) that Charging Party Taum will permanently resign from his position as UPW chief steward; and (4) the above mentioned may be publicly published or announced,

Thereafter, Respondent Nakanelua, in his capacity as UPW State Director, stated that although the Trial Body had the authority to impose monetary penalties against Charging Party Taum and other remaining Charging Parties for bringing charges against him in bad faith, and that those monetary penalties may include payment for the UPW's cost of conducting the trial, and the cost of transportation, room and board for himself and his defense team to participate in the trial, the UPW had sufficient resources to

remunerate the vendors for said expenses. Respondent Nakanelua further stated that these expenses did not include the salaries of the UPW staff assisting the Trial Body, himself and his defense team. Respondent Nakanelua further stated that he had placed in the UPW safe, a personal check payable to the UPW in the sum of two thousand dollars (\$2,000.00) as a deposit, in the event that he was found guilty, and was ordered to pay a penalty to the UPW.

Whereupon, Respondent Nakanelua, in essence, moved for leniency and compassion when he moved that even if the Trial Body determined that some or all of the foregoing charges were not brought in good faith or were actuated by malice, by Charging Party Taum and some or all of the other remaining Charging Parties, that the Trial Body not impose penalties against them. Respondent Nakanelua further moved that in lieu of said penalties, that the UPW be required to pay for the above mentioned expenses of conducting the Trial, and his defense against said charges.

Thereafter, the Presiding Officer adjourned the Trial, and ruled that the Trial Body shall go into executive session to deliberate over the foregoing motions, and the issues raised in the Trial.

DECISION AND ORDER

Upon duly deliberating the foregoing, and there being good cause for the following, the Trial Body, by a recorded vote, unanimously made the following decisions and orders:

1. Respondent Nakanelua is innocent of all of the above mentioned charges that were brought against him - - the Charging Parties failed to sustain any and all of the charges against Respondent Nakanelua;

2. Respondent Nakanelua never acted in collusion with management to the detriment of the welfare of the UPW or its membership;

3. Respondent Nakanelua never violated any provision of the AFSCME Constitution or the UPW Constitution, in entering into the MOU without first having it ratified by the UPW membership, or any unit thereof;

4. Respondent Nakanelua never willfully violated any negotiated and approved collective bargaining agreement by entering into the MOU;

5. Respondent Nakanelua never used the name of the Federation (AFSCME) or the UPW in an unauthorized manner or for an unauthorized purpose by negotiating with management or by entering into the MOU;

6. Charging Party Taum's above mentioned motion to withdraw all charges against Respondent Nakanelua, under the terms and conditions that he stated in conjunction with said motion, all of which are stated above, is granted;

7. The aforesaid charges were not brought in good faith by at least Charging Party Taum;

8. Charging Party Jonathan Taum is

HEREBY ORDERED TO DO THE FOLLOWING:

(a) Within seven (7) calendar days after he receives this

Decision and Order, Charging Party Taum must deliver to Ms. Martti Fernandez, an agent of the Trial Body, at her office located in the UPW Honolulu, Hawaii office at 1426 North School Street, Honolulu, Hawaii 96817, a written resignation confirming that he is permanently resigning from his position as a UPW chief steward for the full duration of his term of that position. A written resignation form to that effect shall be delivered to him by the Trial Body, with these Findings, Decision and Order;

(b) Within seven (7) calendar days after Charging Party Taum receives this Decision and Order, he must sign and deliver to Ms. Martti Fernandez, at her above referenced office, a written apology to Respondent Nakanelua, in which Charging Party Taum shall state that he is sorry for bringing the aforesaid charges against Respondent Nakanelua in bad faith, and that he broke his promise not bring such charges after he shook Respondent Nakanelua's hand and gave Respondent Nakanelua his word that he would not bring such charges. This letter of apology shall be published in the UPW's membership newspaper, the "Malama Pono"; and

(c) That within seven (7) calendar days after Charging Party Taum receives this Decision and Order, in exchange for this Trial Body granting Respondent Nakanelua's motion for leniency and compassion referred to above, Charging Party Taum shall sign and deliver to Ms. Martti Fernandez at her above mentioned office a written waiver which provides that by reason of the foregoing exchange, Charging Party Taum agrees and promises not to seek any UPW office or position of any type for as long as he is a UPW member.

9. The Trial Body's granting of the above mentioned motion for leniency and compassion shall be in effect, only for so long as Charging Party Taum abides with the above mentioned conditions and orders. If and when Charging Party Taum breaches or violates, in any manner whatsoever the foregoing conditions and orders, no matter how slight said breach or violation is, then said granting of the foregoing motion shall no longer be in effect, and the Trial Body as an entity, no matter who it shall be comprised of at the time, shall continue with the penalty phase of said Trial, shall determine who of the other remaining Charging Parties herein, in addition to Charging Party Taum, brought the foregoing charges without good faith or with malice, and shall impose Charging Party Taum and said other Charging Parties who brought these charges without good faith, or with malice, penalties which may likely include payment, from their own funds, the full cost of conducting this Trial, and Respondent Nakanelua's cost of being prepared to present his defense thereto, except for the salaries of any of Respondent Nakanelua's defense team - - - and if these costs are already paid for by the UPW, to reimburse the UPW for the payment of said costs, with the payment of twelve percent (12%) per annum of interest thereon;

10. Respondent Nakanelua's foregoing motion is granted on the condition subsequent that if Charging Party Taum violates any of the foregoing conditions or orders stated above, than the granting of said motion shall no longer be in effect, with the Trial Body, as an entity, continuing with the penalty phase of said Trial; and

11. By executing this Decision and Order, the Trial Body Presiding Officer DeCosta, and the Trial Body Secretary Rowland certify that this Decision and Order accurately reflects the unanimous decisions and orders of the Trial Body that were rendered in the Trial.

DATED: May 5, 2008.



STEVEN DeCOSTA
Trial Body Presiding Officer



GWENDOLYN P. ROWLAND
Trial Body Secretary

**PERMANENT RESIGNATION OF JONATHAN TAUM FROM
UPW CHIEF STEWARD POSITION**

I, Jonathan Taum, a member of the United Public Workers, AFSCME Local 646, AFL-CIO (herein, "UPW"), in making this permanent resignation from my position of one of the UPW Chief Stewards in the UPW Hawaii Division (a UPW Division consisting of employees of the State of Hawaii and County on the island of Hawaii) and waiver of reinstatement into said Chief Steward position, hereby state, covenant, promise and agree as follows:

1. I am a Chief Steward in the UPW Hawaii Division, who is employed by the State of Hawaii, in Bargaining Unit Ten (herein, "Unit 10"), at the Hawaii Community Correctional Center;

2. I brought internal union charges against UPW State Director Dayton M. Nakanelua, under the provisions of the UPW Constitution and the American Federation of State, County and Municipal Employees, AFL-CIO (herein, "AFSCME") Constitution. Thereafter, an internal union trial was conducted on my charges by the UPW Trial Body on Saturday, April 26, 2008 at the UPW's Hilo, Hawaii office. At this trial, I acted upon my own behalf and as the counsel for the other UPW members who joined in on the charges;

3. At the end of my presentation of the Charging Parties' case in chief in this trial, I saw that the foregoing charges were without merit, and could not be sustained, and that, among others, I was in danger of being

found by the UPW Trial Body of bringing charges in bad faith, and thus being in danger of being monetarily penalized by the Trial Body;

4. In exchange for avoiding said penalization by the Trial Body, I made a motion in the trial that I be allowed to withdraw said charges and, among other things, I stated that I will permanently resign from my Chief Steward's position for the duration of my term, and that I permanently waive any right that I may have to be reinstated into that Chief Steward position;

5. My motion to withdraw my charges, in accord with the exchange stated above was granted; and

6. By reason of the foregoing, I hereby permanently resign from my aforesaid Chief Steward position for the duration of the term of that position, and permanently waive any right that I may have to reinstatement thereto. This resignation and waiver shall become effective immediately upon the date stated below.

DATED: Hilo, Hawaii, May _____, 2008.

JONATHAN TAUM

May 14th, 2008

To: **Steve Decosta**, UPW State Executive Board (SEB) President, Trial Body Chairman.

Via: **Gwendolyn Rowland**, UPW State Executive Board Secretary/Treasure,
Trial Body Secretary.

Cc: **James Wataru**, UPW Oahu Division Vice President, Trial Body Member.

Dayton Nakanelua, UPW State Director.

Jonathan Taum, UPW Chief Steward.

From: **Wyatt Lee**, UPW Oahu Division Delegate, Trial Body Member.

Subject: **The Trial Body's decision and order.**

I write this letter to inform you of the clear violations pertaining to this trial bodies decision, and order towards Jonathan Taum, who is a UPW member like the rest of us.

First I would like to inform you that during the 9:00 am briefing Mr. Charlie Khim, who is an Attorney that the union hires as counsel, advised us of how this trial was to proceed. It appeared that with his Language that he used, was influential in favor of Mr. Nakanelua, and that this could be construed as a conflict of interest regarding the trial body proceeding.

On April 26th 2008 you, along with Attorney Khim, whom you declared as your personal counsel, conducted the trial body involving the Accused, Dayton Nakanelua, and Charging party, Jonathan Taum, and seventy three (73) other Bargaining Unit 10 members.

I personally talked to you about the AFSCME Constitution Article X, Section 11 prior to the beginning of the trial. You stated that you had authority in the setting of the trial schedule, and not the trial body, which the entire SEB according to section 11 was entitled to, and denied.

During a break, I spoke with Attorney Khim regarding this issue. He exclaimed that this was an issue that could be looked into. As he read the letters regarding the validity of this trial, he shook his head in disbelief. The Constitution may I remind you is what governs every aspect of union operations. When it comes to the interpretation of any Constitutional language regarding trial body judiciary procedures, it should be left up to the trial body as a whole, and not just the Chairman.

The Bill of Rights #7 States;

Members shall have the right to full participation, through discussion and vote, in the decision making processes of the union, and to pertinent information needed for the exercise of this right. This right shall specifically include decisions concerning the acceptance or rejection of collective bargaining contracts, memoranda of understanding, or any other agreements affecting their wages, hours, or other terms and

conditions of employment. All members shall have an equal right to vote and each vote cast shall be of equal weight

Again, this is what is written in our constitution.

The Issue of this trial being in violation of the constitution was brought to your attention previously on April 22nd 2008 by myself and Oahu Division Delegate Bernard Kuamoo. Please see attached. You advised me that what we sent to Mr. James Wataru was an erroneous act. May I remind you that we sent it to Mr. Wataru as a chain of command procedure, Here we simply exercised our Bill of Right #2 Members shall suffer no impairment of freedom of speech concerning the operations of this union. Active discussion of union affairs shall be encouraged and protected within this organization.

As you addressed us in your response dated April 24th 2008 as "**Oahu Division Delegates**". That is confirmation that the erroneous remark was not warranted. You did make it clear that it is the State Executive Board, and not the Oahu Division Board that becomes the trial Body.

Also in your response, you misquoted our statement when you wrote that we said in our 6th paragraph of our letter that you had the authority to convene meetings of the trial body. We were merely recommending that you postpone the trial until the (SEB) could be convened to exercise Article X, section 11. In conclusion to the validity of this trial it was not held according to constitutional standards.

I also want to make mention that the trial was totally biased according to all the decisions that was given to you by Mr. Khim. There was time during the trial that witnesses was called by Mr. Taum, and was denied by you, however the witnesses called by the accused was upheld. There was clearly more objections towards Mr. Taum, than Mr. Nakanelua. You would also Limit Mr. Taum as to what he could do in terms of handling his case. Where as Mr. Nakanelua was allowed many avenues of defending his case.

The most embarrassing part of this trial was when you told Mr. Taum to Question himself. As chairman, seeing that the evidence for the defense was overwhelming, you choose to allow this proceeding to continue, instead of calling for a recess and offering Mr. Taum a way to drop the charges and calling for a truce.

According to Article X, Section 12, Subsection I. It states;

The right to choose a person to act as the accused person's counsel in the case. In this rule it uses the word **PERSON** in reference to council. Did the defense follow this section of the constitution? I say no, because the word person is in singular form which means "of one" It did not state **PERSONS**. Which the Accused noted on record, numerous union staff members from various Islands as co councils. The message here was quite clear that they came to bury the accuser (a member).

After a recess, I recollect Mr. Taum dropping all charges against Mr. Nakanelua, and that he would resign from his current union position. Mr. Nakanelua, as I recollect correctly, verbally addressed the trial body asking them to refrain from imposing any of the sanctions in Mr. Nakanelua's Memorandum of Accused Party Response to charges as an act of forgiveness. However he did mention that he wanted all of his co council and affected witnesses to be refunded costs of hotel, room and car, etc. concerning the trial by the local, to which during the deliberation I mentioned that a breakdown of the costs should be open for discussion. Question? Was Mr. Nakanelua's Co council's and witnesses costs pre paid by the local or was it paid for out of their own personal finances. At this time I want to request from you all financial record concerning this trial.

As it states in the Bill of Rights #6

Members shall have the right to a full and clear accounting of all union funds at all levels. Such accounting shall include, but not be limited to, periodic reports to the membership by the appropriate fiscal officers and periodic audits by officers elected for that purpose or by independent auditors not otherwise connected with the union.

During the trial briefing, Mr. Khim stated that this trial would be ran as an actual court session. When we entered into deliberation, Besides Mr. Khim, there was Marty Fernandez, and Mihn, who are non members of the trial body that was present during deliberation. In actual court cases Juries convene in private settings as to protect the integrity of their fair verdict.

The deliberation was unanimously decided that;

1. An article is published warning members to be watchful of what they sign for regarding petitions in the Malama Pono periodical. **Reasonable.**
2. An apology to Mr. Nakanelua, from Mr. Taum to be published in the Malama Pono. **Keep in mind this was exactly the kind of tactics former State Director Gary Rodrigues used to quiet the members, and to humiliate them publicly. The Malama Pono is the union's avenue of communication for positive information.**
3. Mr. Taum be ineligible to run for office for the duration of his membership with the UPW. According to Article X, Section 15, Subsection F, it states Suspension from the right to hold or seek any elected position at any level of the union for a period not to exceed four years. **Obvious due process right violation.**
4. The Local would reimburse Mr. Nakanelua's co council and witnesses. **Now why would the Local have to assume the cost of the accommodations for his co councils and witnesses?**

As a condition that he would agree to all these sanctions, the trial body decided if he did not agree that we would pursue the penalty phase. This can be construed as a written threat to Mr. Taum.

I voted in agreement of these sanctions. I am now notifying you I am abstaining my vote from the above mentioned issues. In light of what has transpired, it is not in good faith for the union as a trial body member to render a judgment against Mr. Taum for

the very reason that he was not on trial. The record will reflect that he was the one that dropped the charges. How can this trial body make any kind of decision regarding the judiciary procedures according the AFSCME constitution when we only received a copy of it just minutes prior to the trial. Upon my departure of the Island of Hawaii, I have had the chance to familiarize myself with the Unions judiciary process, and after careful review of the Constitution, I see there were many violations against Mr. Taum which needs your immediate attention.

Finally, the packet sent to me on May 7th 2008 consisted of a Notice, a resignation form, and the alleged finding of the trial body. The Notice Is Threatening, The resignation letter was not prepared in the words of Mr. Taum, the trial body's findings, decisions, and order has several questionable, issues. In the issue of charging party Jody Rivera, it is stated on page 3 paragraph 5, "that he never wanted to bring charges against Respondent Nakanelua". He also moved to have his name withdrawn from the petition that he knowingly signed. As chairman, you allowed this to be entered on to record, with no objection from Mr. Nakanelua.

Now When I look at this from the principle of fairness, Mr. Taum, and Mr. Rivera are one in the same. There are both charging party members as the record will confirm. Yet they both were handled differently. Mr. Taum is ordered to be sanctioned, and Mr. Rivera is given a free pass. Clearly an act of prejudice.

It is written in these documents about the trial body's motion for leniency and compassion on page 11, and on the same page they talk about any breach or violation of this pre written contract they will go forward with the penalty phase of the trial. It is even written that a 12% per annum will be imposed on monies to be reimbursed to the UPW. This I know for fact was never agreed upon by any of the trial body members.

There was language in these documents that twists the meanings of what was actually discussed in the deliberation, this needs to be addressed.

I am concerned for the judiciary process of our Union, and for the due process rights of both parties. This trial was not conducted according to strict constitutional procedures. Again I am notifying you that I will abstain my vote. I am recommending that this trial be investigated. Make no mistake my concerns have nothing to do with the two parties and there issues, however my concerns are about how things were done.

Submitted for your pursual.


Wyatt Lee

5/15/08
Date

To: Steve Decosta, UPW State Executive Board President, and Trial Body Chairman

VIA: Gwendoly Rowland, UPW State Executive Board Secretary Treasure,
Trial Body Secretary.

CC: James Wataru, UPW Oahu Division Vice President, And Trial Body Member.
Jonathan Taum, UPW Chief Steward.

I Bernard Kuamoo Jr. Oahu Division Delegate, member of the State Executive Board, and who also sat as a member of the Trial Body on Saturday April 26, 2008 at the UPW's Hilo, Hawaii office, is stating that I am rescinding my vote in the sanctioning of Jonathan Taum.

On April 22, 2008 Oahu Delegate Wyatt Lee and I notified you via a written letter of the possible violation. You responded to our memo via letter dated April 24, 2008 paragraph 4 that you as the presiding officer of the Trial Body, have been designated to decide all procedural issues. You also stated "I, not the Trial Body as a whole, have the authority to make decisions on whether the proper procedure has been followed." My reasons for rescinding my vote is as follows.

The presiding officer means that you are the leader of a group meeting, to occupy the place of authority or control, as in an assembly or meeting, act as president or chairperson, and also to exercise management or control. This point is made to give understanding of the presiding officer.

According to UPW CONSTITUTION ARTICLE 8 Section 3. g it states that you are to interpret the Constitution of the Union whenever questions arise, but the President's interpretation shall be subject to the approval of the State Executive Board. With that being said, I now question your point when stated, "I, not the Trial Body as a whole, have the authority to make decisions on whether the proper procedure has been followed." It is clear that your statement contradicts the Constitution.

I now quote UPW CONSTITUTION, ARTICLE 6, Section 1, which states that the State Executive Board shall consist of the:

- A. State Director
- B. State President
- C. State Secretary-Treasurer
- D. Division Vice-Presidents
- E. Division Secretaries
- F. Division Treasurers
- G. Division Delegates

This is to point out to you that in article 20 of the UPW CONSTITUTION, Regarding OFFENSES, TRIALS, AND APPEALS. That it states:
Refer to AFSCME Constitution, Article X, Judicial Procedure.

In reference to AFSCME Constitution Article X Section 7 the trial body at the local union level shall consist of the local executive board, unless the local constitution provides otherwise. With this being said it is clearly stating that the trial body shall consist of the local Executive Board.

Your statement mentioned above which you stated "I, as the presiding officer of the trial body, have been designated to decide all procedural issues" Contradicts AFSCME CONSTITUTION, ARTICLE X, Section 11, which states that, the trial body shall fix the date, time, and place for the trial in such a manner as to afford the maximum convenience to both the accused and the accuser practical under all the circumstances. Except as otherwise specifically provided in this Constitution, it shall not be necessary to maintain a verbatim record of the trial unless request for such record is made by a directly interested party to the proceedings.

Because the membership voted me in as Oahu Division Delegate, I feel it is my duty to correct and question what I feel is wrong until I am proven other wise. I am writing this letter not to attack anyone nor do I have a personal vendetta against anyone. I am simply pointing out the wrongs that should be made right.

In conclusion at no time did the State Executive Board and or Trial Body convene to discuss in fixing of the date, time, and place of trial as it states in AFSCME CONSTITUTION, ARTICLE X, Section 11.

Secondly On April 26, 2008, at the hearing on the Island of Hawaii you were acting in the capacity as the Trial Body Presiding Officer, however from the beginning and throughout the hearing attorney Charles Khim sat beside you, and what appeared to be he advising you on what to say for all procedural and substantive statements, orders, decisions, and rulings. I believe that attorney Charles Khim was the de facto Trial Body Presiding Officer because he controlled thru you the entire hearing. Attorney Khim could not be apart of the trial body, he is not a member, he was not voted in by the members, nor do's he sit on the State Executive Board. With this said, I strongly feel that this trial should be considered a miss trial.



Bernard Kuamoo Jr.

Oahu Division Delegate

Member of the State Executive Board

5/31/08
Date



MALAMA PONO

OFFICIAL PUBLICATION OF THE UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO

VOLUME XLII, NUMBER 3

MAY/JUNE/JULY 2008

REPORT OF THE STATE DIRECTOR

Contract Negotiations

Thank you to the members that submitted written contract proposals to the 2009-2011 Collective Bargaining Agreement. Many of the contract proposals were well thought-out and show the effort of members trying to improve our Unit 1 and Unit 10 contracts.



The Unit 10 and Unit 1 Full Negotiating Committees met on Saturday, May 10 and May 17, 2008, respectively, to review the contract proposals. Your Chief Steward, as a member on the Full Negotiating Committee, reviewed, discussed, and voted on the contract proposals to be recommended to be submitted to the Employer for negotiations. Thank you to all the Chief Stewards that participated at the all day meetings on their own personal time.

On June 3 and 4, 2008, the final contract proposals for the Unit 10 and Unit 1 negotiations were approved by the respective Full Negotiating Committees and submitted to the Employer on June 16, 2008.

UPW State Executive Board

The newly elected members of the UPW State Executive Board participated on a AFSCME Study Tour to the International Union Headquarters

in Washington D.C. on April 14-18, 2008. The work sessions were informational and educational.

The UPW State Executive Board held its first meeting for 2008 at the UPW Henry B. Epstein Building, in Honolulu, on Saturday, May 31, 2008. The all day meeting provided the 33-member Board an opportunity to review and approve UPW programs and investments. A summary of the SEB meeting is in this issue of Malama Pono.

Democratic Party of Hawaii Convention

The Democratic Party of Hawaii Convention was held at the Hilton Hawaiian Village Hotel on May 23, 24 and 25, 2008. UPW State Executive Board member Edmond Arquero was elected as a National Alternate Delegate and I was elected as a National Delegate. As part of the Hawaii delegation, both of us will be traveling to Denver, Colorado to attend the National Democratic Party Convention on August 25-28, 2008.

Me ke aloha pumehana!

Dayton M. Nakanelua
State Director

TAUM000088

EXHIBIT 6

Johnathan Taum apologize to State Director Nakanelua

Dayton Nakanelua,

I am sorry for bringing the aforesaid charges against you in bad faith, and that I broke my promise not to bring such charges after I shook your hand and gave you my word that I would not bring such charges.

Taum

This article is written and printed in Malama Pono by unanimous order of the UPW Trial Body on April 26, 2008. The UPW Trial Body is the elected members of the UPW State Executive Board. The purpose of the article is for membership education.

AFSCME CONSTITUTION

Article X, Section 1, of the AFSCME International Constitution provides that members may file charges against any member of the Union.

However, Article X, Section 16, of the AFSCME International Constitution states, in part:

"If the charges are not sustained, and the trial body or the appellate body is convinced that the charges were not brought in good faith or were actuated by malice, the trial body or the appellate body may impose such penalty on the charging party as in its judgment is deemed proper under the circumstances."

BACKGROUND

Jonathan Taum is an Adult Corrections Officer (ACO) IV and was the Chief Steward at the Hawaii Community Correctional Center in the Hawaii Division on the Big Island of Hawaii. He and 73 other ACOs signed a petition, dated October 23, 2007, that included charges against the State Director.

On April 26, 2008, a trial was held in Hilo. The charges alleged included State Director Nakanelua violated

members' right to vote on a new sick leave program (MOU) for ACOs, unauthorized use of the name of the Union. The allegation also included collusion.

STATE DIRECTOR INNOCENT

At the conclusion of the Charging Parties presentation of its evidence against the State Director, Jonathan Taum requested that the Trial Body grant his request to drop the charges against State Director Nakanelua. In granting the request, the Trial Body found State Director Nakanelua innocent of all charges and determined that the charges were brought in bad faith.

TRIAL BODY'S FINDINGS AGAINST TAUM

The Trial Body's Findings stated, in part, "During the Trial, Charging Party Taum admitted on cross-examination that:

1. He freely and voluntarily participated as a UPW bargaining team member in negotiations with the PSD management on the terms of the MOU, including the October 9, 2007 negotiations session at which the final issues for the MOU were agreed upon.

2. That the UPW's need to comply with the Hawaii public sector collective bargaining law set forth in HRS, Chapter 89, supersedes the UPW's need to comply with the ratification of agreements provision in the AFSCME Constitution.

3. He previously raised the issue of ratification of the MOU with Respondent Nakanelua, was satisfied with Respondent Nakanelua's explanation as to why compliance with HRS, Chapter 89 superseded the ratification requirement in the AFSCME Constitution.

4. After this conversation with Respondent Nakanelua, he shook Respondent Nakanelua's hand and promised that he would not file charges against Respondent Nakanelua over the issue of ratification of the MOU.

5. On a subsequent occasion, he again promised Respondent Nakanelua that he would not pursue charges on the issue of ratification of the MOU.

6. In spite of the fact that he had promised Respondent Nakanelua on two separate occasions that he would not file charges on the issue of the ratification of the MOU, he filed the current charges regarding the non-ratification of the MOU.

7. Charging Party Taum admitted that rather than merely soliciting signatures of fellow ACOs for a petition, he was in fact seeking signatures for charges to be filed against State Director Nakanelua."

TRIAL BODY'S DECISION AGAINST TAUM

The Trial Body's Decision and Order stated, in part, "Upon duly deliberating the foregoing, and there being good cause for the following, the Trial Body, by a recorded vote, unanimously made the following decisions and orders:

1. Respondent Nakanelua is innocent of all of the above mentioned charges that were brought against him - - the Charging Parties failed to sustain any and all of the charges against Respondent Nakanelua;

2. Respondent Nakanelua never acted in collusion with management to the detriment of the welfare of the UPW or its membership;

3. Respondent Nakanelua never violated any provision of the AFSCME Constitution or the UPW Constitution,

in entering into the MOU without first having it ratified by the UPW membership, or any unit thereof;

4. Respondent Nakanelua never willfully violated any negotiated and approved collective bargaining agreement by entering into the MOU;

5. Respondent Nakanelua never used the name of the Federation (AFSCME) or the UPW in an unauthorized manner or for an unauthorized purpose by negotiating with management or by entering into the MOU;

6. Charging Party Taum's above mentioned motion to withdraw all charges against Respondent Nakanelua, under the terms and conditions that he stated in conjunction with said motion, all of which are stated above, is granted;

7. The aforesaid charges were not brought in good faith by at least Charging Party Taum."

TRIAL BODY'S ORDER AGAINST TAUM

Based on Trial Body's Findings and Decision on Jonathan Taum, the Trial Body ordered Jonathan Taum, within seven days, to complete the following:

1. Deliver "a written resignation confirming that he is permanently resigning from his position as a UPW chief steward or the full duration of his term of that position."

2. Deliver "a written apology to Respondent Nakanelua, in which Charging Party Taum shall state that he is sorry for bringing the aforesaid charges against Respondent Nakanelua in bad faith, and he broke his promise not bring such charges after he shook Respondent Nakanelua's hand and gave Respondent Nakanelua his word that he would not bring such charges. This letter of apology shall be published in the UPW's membership newspaper, the "Malama Pono"; and

3. That "in exchange for this Trial Body granting Respondent Nakanelua's motion for leniency and compassion ... deliver ... a written waiver which provides that by reason of the foregoing exchange, Charging Party Taum agrees and promises not to seek any UPW office or position of any type for as long as he is a UPW member."

Kauai County Alcohol and Drug Testing Agreement Signed

On June 17, 2008, the UPW and County of Kauai signed the alcohol and controlled substance testing supplemental agreement for Unit 1 non-CDL employees.

"A lot of time and effort went into developing this supplemental agreement," said Kauai Administrative Assistant Gary Heu. "We are appreciative of our employees, and the union leadership that represents them, for their willingness to help keep the county's work environment safe and drug-free."

About 300 Kauai County non-CDL employees will be affected by the new supplemental agreement.



Sitting L-R: Kauai Personnel Services Manager Tom Takasuki, Personnel Services Department Director Malcolm Fernandez, Administrative Assistant Gary Heu, UPW State Director Dayton Nakanelua, and Division Director Leilani Mindoro. Standing L-R: UPW members Franklin Iwai, Derwin Abalos, Virgie Sagaisi, Mila Ragraola, Antonio Ragraola, and Francis Nishizawa.

Johnathan Taum (con't. from pg 7)

Jonathan Taum voluntarily fulfilled the aforementioned Trial Body's Order on May 16, 2008.

This union trial process afforded the UPW members who attended the trial, and the Trial Body, important lessons in union democracy and due process, including: the necessity for treating a person accused of a violation of the AFSCME Constitution innocent until proven guilty; the right of an accused to face his accusers and ask them questions about their accusations; being able to present witnesses in his or her favor; and having a neutral Trial Body of his or her peers determine his or her innocence or guilt.

These principles of union democracy are what the UPW firmly believes in, and are what the UPW enforces in the workplace for its members. The UPW strictly enforces these principles in support of its members in the workplace.

Another important lesson learned as a result of trial is that we must be responsible for our actions especially when requested in the signing of documents. Witnesses testified that they were unaware the documents they signed included charges being filed against the State Director. It was not made clear that they were signing a document that contained serious allegations on the part of the State Director. No doubt we should exercise the diligence and caution when signing documents of the kind that initiated the events that followed and that we may be held accountable.

TAUM000091

MAY/JUNE/JULY 2008

IT'S TIME TO SAVE AT THE PUMP WITH ALOHA PETROLEUM AND CONTRIBUTE TO THE UPW SCHOLARSHIP FUND

With an Aloha Save-A-\$ Club® Affinity charge card you can purchase Aloha Petroleum's Top Tier quality gasoline or PowerKing diesel fuel and receive 4 cents per gallon off the regular pump price!

In addition to your savings, Aloha Petroleum will contribute 1 cent per gallon to the UPW Scholarship Fund for each gallon you purchase!

That's right! ... 4 cents-per-gallon discount for YOU and 1 cent-per-gallon to support the UPW Scholarship Fund!

Apply today! Call Aloha at 522-9222 or visit http://www.alohagas.com/olcna_ag.asp?a=50 for more information.

(See page 8 for application)

EXHIBIT 6



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Secretary-Treasurer

Vice Presidents

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South St. Paul, MN


April 3, 2019

INTERNATIONAL EXECUTIVE BOARD CASE NO. 19-07
Akau v. Nakanelua

Greetings:

Enclosed is International Vice President Greg Devereux's decision in the above-captioned case.

In solidarity,


LEE SAUNDERS
President

LS/JR:sh

Enclosures

cc: Elissa McBride, Secretary-Treasurer
Judith Rivlin, General Counsel
Mike Sukal, Director, O&FS
Walter Blair, Western Regional Director, O&FS
Liz Ho, Area Field Services Director, O&FS
UPW Local 646 Executive Board

EXHIBIT "7"

American Federation of State, County and Municipal Employees AFL-CIO

TEL (202) 429-1000 FAX (202) 429-1293 TDD (202) 659-0446 WEB www.afscme.org 1625 L Street, NW, Washington, DC 20036-5687

INTERNATIONAL EXECUTIVE BOARD CASE NO. 19-07

AKAU v. NAKANELUA

This case involves charges filed by Edward Akau Jr., a member of United Public Workers, AFSCME Local 646 ("UPW" or "Local 646"), against Dayton Nakanelua, State Director of Local 646.

The charges were filed with Local 646 in August 2018. When the Local did not convene a trial body to consider the charges in a timely fashion, Brother Akau submitted the charges to the Chairman of the Judicial Panel. The Chairman of the Judicial Panel referred the charges to the International President, pursuant to Article XI, Section 10 of the International Constitution because the accused party is a member of the Judicial Panel. President Saunders appointed the undersigned to serve as the trial officer.

Following due notice to all interested parties, the trial was scheduled and held on February 12, 2019, in Honolulu, HI.

THE PARTIES

Charging Party Edward Akau Jr. appeared at trial and represented himself. Accused party Dayton Nakanelua appeared at trial and was represented by Herbert Takahashi, Esq.

THE CHARGES

(See Attached)

EVIDENCE IN SUPPORT OF THE CHARGE

Brother Akau works at a juvenile detention center that is part of Bargaining Unit 10. In March 2018, he suffered an injury at work. When he returned to work, his employer advised him

EXHIBIT "7"

TAUM000093

about a "Pilot Attendance" Memorandum of Understanding (hereafter referred to as the "Attendance MOU") that the employer was applying to Brother Akau. It required Brother Akau to work two consecutive days after he missed scheduled work due to an injury and failed to produce a doctor's note. The employer gave Brother Akau a highlighted excerpt of the Attendance MOU but did not provide the entire document. When Brother Akau asked the employer for more information about it, the employer referred him to the union.

On April 2, 2018, Brother Akau filed a grievance over the Attendance MOU, on the grounds it was unilaterally implemented, and had not been ratified by the members. His union representative, Michele Hebblethwaite, told Brother Akau that MOUs like the Attendance MOU do not have to be ratified.

On April 12, 2018, Brother Akau asked Sister Hebblethwaite for a copy of the full Attendance MOU; he received the MOU¹ on November 16, 2018, more than seven months later. Brother Akau filed this charge in August 2018 because he had not heard anything further about the grievance he filed in April.

The Attendance MOU was intended to deal with employees who have habitual patterns of sick leave. It requires an employee taking unscheduled sick leave to report immediately to a medical facility. If the employee does not report to a medical facility or does not produce proof of illness, the employer implements a schedule of consecutive work days, with two more consecutive days of work assigned for each day missed without a doctor's note.

¹ The Attendance MOU that was provided to Brother Akau was characterized as a "Pilot Project" which was to be effective May 7, 2016 through April 30, 2017. However, the policy remained in effect after April 30, 2017 and was applied to Brother Akau in March 2018.

Brother Akau admitted that he was not subjected to discipline when he missed scheduled work. However, he explained that the Attendance MOU was still unfair because it required him to work two consecutive days after he missed a day of work based on a bona fide injury simply because he did not produce a doctor's note. The injury that caused him to miss work essentially made him bed-ridden so he could not get himself to a medical facility. Brother Akau noted that even though he did not obtain a doctor's note, he had sent photos of his swollen knees to his employer. Brother Akau asserted that even if the Attendance MOU might not be considered disciplinary, it had an adverse impact on him by requiring him to work consecutive days after returning to work after an injury; in this case, a weekend that he otherwise would not have had to work.

Brother Akau explained that he felt the Attendance MOU should have been submitted to the members for discussion and a ratification vote before it was implemented based on Paragraph 7 of the UPW Bill of Rights. Paragraph 7 of the UPW Bill of Rights provides:

Members shall have the right to full participation, through discussion and vote, in the decision-making processes of the Union, and to pertinent information needed for the exercise of this right. This right shall specifically include decisions concerning the acceptance or rejection of collective bargaining contracts, memoranda of understanding, or any other agreements affecting their wages, hours, or other terms and conditions of employment. All members shall have an equal right to vote and each vote cast shall be of equal weight.

Despite this being part of the UPW Constitution, it is undisputed that the Bargaining Unit 10 employees did not ratify the Attendance MOU. Likewise, those employed at the juvenile detention center where Brother Akau works did not vote on the Attendance MOU.

EVIDENCE IN REFUTATION OF THE CHARGES

At the hearing, State Director Nakanelua initially raised several procedural issues and sought to have the charge dismissed. His motion to dismiss was taken under advisement.

Brother Nakanelua asserted he was not provided with timely notice of the charge. It was first filed with UPW in August, but he stated he did not receive a copy of it, nor was there a trial within 60 or 63 days as provided in Article X, Section 12 of the International Constitution. Brother Nakanelua admittedly saw the charges on October 23, 2018 in connection with a notice dated October 23, 2018 whereby the UPW President and Secretary Treasurer set a trial date in December for UPW to consider the charge. However, he notes that the Local did not convene a trial hearing within the time set forth in Article X, Section 12 of the International Constitution. Before the Local conducted a trial, the charge was submitted to the Judicial Panel and referred to President Saunders. President Saunders advised UPW that the International Union had taken jurisdiction of the charge and the Local should not convene its trial board. While Brother Nakanelua received a letter dated December 4, 2018 from International President Saunders about the charge, a hearing was not conducted within 63 days of that notice.

In his post-hearing brief, Brother Nakanelua also alleged the charge lacked the requisite specificity, and that he was improperly denied the right to be tried by the Local union. He further alleged that Brother Akau did not have "standing" to pursue his charge, insofar as he was not able to prove any injury. This argument is predicated on the fact that the Attendance MOU Brother Akau introduced as support for his charge was for the "Pilot" attendance program, and the dates for it had already passed by the time of the incident Brother Akau relied upon.

As for the merits, Brother Nakanelua raised several defenses. He asserts that the Hawaii state law expressly permits the union to make mid-term modifications, and the law does not require the union to subject such mid-term MOUs to ratification votes. He testified that the state law has long required "master agreements" to be ratified, and UPW has submitted such agreements to ratification votes. He also stated that the law changed in 2000, and since then the law has permitted "supplemental" agreements to be entered into by the union without undergoing any ratification vote. He relied on Section 89-10 (a) of the Hawaii state law in support of this argument which provides in relevant part that:

Any collective bargaining agreement reached between the employer and exclusive representative shall be subject to ratification by employees....Ratification is not required for other agreements effective during the term of the collective bargaining agreement, whether a supplemental agreement, an agreement on reopened items, or a memorandum of agreement, and any other agreement to extend the term of the collective bargaining agreement.

Accordingly, Brother Nakanelua claimed the state law covers the Attendance MOU Brother Akau presented here, and it does not require ratification for this mid-term change. He further argued that if the hearing officer were to find merit with this charge and require the revocation of the agreed-upon MOU, an insurmountable problem would be created if it resulted in all MOU's being declared void. Brother Nakanelua also asserted there is an "irreconcilable" conflict between Paragraph 7 of the UPW Bill of Rights and the state law.

Brother Nakanelua claimed it would constitute a prohibited practice under the HLRB to require the ratification of mid-term MOUs insofar as the master agreement permits mid-term changes whenever there is mutual consent. He also claimed the HLRB has exclusive jurisdiction over questions alleging a union's failure to ratify an agreement and over prohibited personnel

practices, noting that a case raising a sick leave MOU was presented to the HLRB and is now on appeal.

Brother Nakanelua also provided evidence that in 2008 and again in 2010, the Local 646 Executive Board considered the issue and interpreted Paragraph 7 of the Local's Bill of Rights as not requiring the State Director to submit MOUs to membership ratification. He also claimed that to require ratification votes for mid-term MOUs would violate public policy, and it would violate the law for UPW to repudiate any MOUs that have already been agreed upon and implemented.

Brother Nakanelua stated that the current master agreement has been in effect since July 1, 2017 and continues through June 30, 2021. It was ratified by the Unit 10 Bargaining Unit employees. Section 1.05 of the master agreement states:

The Employer shall consult with the Union when formulating and implementing personnel policies, practices and any matter affecting working conditions. No changes in wages, hours, or other conditions of work contained herein may be made except by mutual consent.

In other words, the collective bargaining agreement anticipates mid-term changes if the parties achieve "mutual consent."

Brother Nakanelua testified that Section 1.05 has been in the master agreement since the early 1970's and UPW members have ratified this language many times since it was first added. Per Brother Nakanelua, there also have been many arbitration awards in which arbitrators have upheld Sec 1.05, including some that deal with sick leave. Brother Nakanelua explained that making mid-term changes pursuant to Section 1.05 is an established past practice that he has

exercised, as have prior State Directors and the Administrator when UPW was under Administratorship.

Brother Nakanelua stated that in the course of any master agreement, the state makes numerous requests for consent to changes in existing terms of work in the master agreement. He estimated that about 25% of the "requests to consult" end up getting to "mutual consent"; that is, to agreed-upon MOUs. He explained that when the employer makes a request for a mid-term change, the union assigns it to the appropriate division, and the UPW staff and stewards are then involved in follow-up meetings with the affected membership.

The Bargaining Unit 10 master agreement includes a provision on sick leave whereby abuse of sick leave can lead to discipline. Brother Nakanelua explained that the Attendance MOU at issue here created a better way to deal with absenteeism, such that it would not be treated in a disciplinary manner. He stated that before UPW agreed to it, there were labor-management meetings, which included members from the juvenile detention center. According to Brother Nakanelua, UPW staff took a draft of the employer's proposal to the juvenile detention to explain it to the employees at that worksite. He stated that a majority of the members who worked at the detention center attended a series of meetings in March 2016 to discuss the employer's proposal.² According to Brother Nakanelua, those employees raised two issues of concern. He testified that before the union agreed to this Attendance MOU, UPW went back to the employer and the parties revised it to address the members' concerns.

Brother Nakanelua then offered information about a similar internal union charge that was filed against him in 2008 over an alleged failure to ratify another MOU (dealing with sick

² These meetings occurred, and the MOU was agreed-upon in 2016, when Brother Akau was on an extended disability leave:

leave for Unit 10). Those charges were brought under Art X, Sec 2 A, D, G, and H of the International Constitution. The UPW Executive Board served as the trial body and found a) the law did not require ratification, and b) ratification would have violated the parties' past practice. The trial body found that Brother Nakanelua did not violate any provision of either the International Constitution or the UPW Constitution by entering into an MOU without first getting it ratified. This decision was not appealed to the Judicial Panel.

Brother Nakanelua stated that a similar issue arose again in December 2010. At the UPW State Executive Board meeting on December 18, 2010, there was a discussion about whether MOUs had to be ratified by the membership, based on Bill of Rights' Paragraph 7 of the UPW Constitution.³ At that time, the State Board voted to leave the practice intact; that is, no membership vote was required before the UPW could consent to an MOU. Therefore, Brother Nakanelua claims the union has already interpreted the provision Brother Akau is relying on here, and that no ratification vote is necessary before UPW is permitted to agree to a mid-term MOU, like the Attendance MOU.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The undersigned finds the procedural issues do not have merit. Brother Akau filed his charges with the Secretary of UPW, as is provided in Article X, Section 6 of the International Constitution, which is the procedure for processing charges set forth in the UPW Constitution. That the Local was tardy in sending them to the Accused Party and in setting a trial date cannot deprive Brother Akau of his right to have his charges considered. When the Local failed to set a

³ The Bill of Rights was added to the UPW Constitution in 1975, and paragraph 7 remains unchanged.

trial within the specified timeline, Brother Akau submitted his charges to the Judicial Panel. The International Union then took original jurisdiction, which is contemplated in Article X of the International Constitution. Moreover, there was no suggestion or any contention that the delay prejudiced the Accused Party, Brother Nakanelua. Finally, there was no prejudice to Brother Nakanelua regarding when the trial was convened, and he did not raise this as an issue until after the undersigned had already begun the hearing.

In addition, the charges were sufficiently specific. The charges explained the MOU at issue,⁴ and alleged that it was entered into without any ratification vote, in violation of Paragraph 7 of the Bill of Rights. Brother Nakanelua provided a robust and focused defense, supported by 57 exhibits, consisting of well over 1,000 pages in cases, law and other documentary support. There is no doubt he understood the substance and scope of the charge and was not harmed by the delay in the matter proceeding to hearing.

Turning now to the merits of the charge, it is clear that both the Hawaii state law and the master agreement permit UPW to make mid-term changes to “wages, hours, or other conditions of work”, provided there is “mutual consent”. It is also undisputed that the Attendance MOU was not submitted for a ratification vote.

UPW’s experience of not requiring ratification before agreeing to such changes is a long-standing practice and did not begin with the Accused Party. Indeed, within UPW there is significant support for the belief that the State Director may consent to any changes the employer

⁴ While Brother Nakanelua asserted that the Attendance MOU Brother Akau submitted had already expired, it was the MOU that both his employer and his union representative gave him, and it was the Attendance MOU that was applied to him. Even if it was expired, whether the MOU should have been ratified remains a live issue particularly given Brother Nakanelua’s admitted practice of not ratifying MOU’s.

proposes without submitting the proposed changes to a vote of the membership, regardless of the issue. Thus, the question raised here is whether Brother Nakanelua has improperly failed to obtain ratification of changes that affect members' wages, hours, or other conditions of work.

Paragraph 7 of the Bill of Rights in the Local 646 Constitution is identical to paragraph 7 of the Bill of Rights in the International Constitution. Paragraph 7 of the Bill of Rights in both the UPW and International Constitutions provides:

Members shall have the right to full participation, through discussion and vote, in the decision-making processes of the Union, and to pertinent information needed for the exercise of this right. This right shall specifically include decisions concerning the acceptance or rejection of collective bargaining contracts, memoranda of understanding, or any other agreements affecting their wages, hours, or other terms and conditions of employment. All members shall have an equal right to vote and each vote cast shall be of equal weight.

Paragraph 7 expressly guarantees members the right to discuss and vote on collective bargaining agreements and MOUs that affect members' wages, hours or other terms and conditions of employment, and has been so interpreted by the Judicial Panel. In addition, Article IX, Section 49 of the International Constitution provides in relevant part:

The constitution of every subordinate body and any change of any nature in the constitution of any subordinate body shall conform to the provisions of the International Constitution including the provisions of the Bill of Rights.... [I]f a conflict between such subordinate body constitution or amended constitution and the International Constitution including the provisions of the Bill of Rights is found, the provisions of the International Constitution shall prevail.

Based on this language in the International Constitution, UPW's contrary interpretation of its own Bill of Rights' Paragraph 7 simply carries no weight and cannot continue.

Thus, even if the state law permits Local 646 to make mid-term changes and Local 646 "is not required" to undergo a ratification process, the law does not prohibit UPW from submitting proposed MOU's or other mid-term agreements to a membership ratification vote.

EXHIBIT "7"

TAUM000102

Stated another way: Brother Nakanelua (and by extension UPW) is required to honor the democratic procedures incorporated in the Bill of Rights, as interpreted by the International Union. Thus, it must submit to a ratification vote decisions concerning the acceptance or rejection of collective bargaining contracts, memoranda of understanding, or any other agreements affecting their wages, hours, or other terms and conditions of employment. To hold otherwise would be to ignore that, as stated at Article IX, Section 54 of the International Constitution, "All subordinate bodies shall at all times be subject to the provisions of the International Constitution."

The undersigned also rejects Brother Nakanelua's argument that the HLRB is the appropriate forum for determining what actions he and UPW are required to take under the UPW and the International Union Constitutions. This is an internal union matter, involving the interpretation and application of the UPW and International Union Constitutions. As noted above, there is no conflict between Hawaii law and the UPW and International Union constitutions. Moreover, the HLRB is not empowered to delve into the internal affairs of this union.

Before agreeing to the Attendance MOU at issue here, UPW staff explained the employer's proposal to the affected members. UPW sought and received the members' feedback, after which UPW was able to negotiate changes that were responsive to what the members requested. That was all appropriate and a practice that should be continued. The undersigned notes it would not have required much for Brother Nakanelua to add one more step – that is, to hold a ratification vote among the affected members before giving UPW's "consent" to the employer. That additional step will be required, going forward, based on this decision. To be

clear: for MOUs that have already been agreed-upon and that are already in effect, those can and should remain in place. The undersigned is not requiring them to be revoked.

The undersigned recognizes that there are practical considerations involving the administration of collective bargaining agreements. Not every clarification or adjustment requires that the language be brought to the membership for discussion and a vote. This decision, rendered on one particular set of facts, cannot explain precisely which mid-term agreements should be submitted for a ratification vote, and which ones may not require that process. However, the threshold for when a vote is required turns on whether the proposed agreement affects members' "wages, hours, or other terms and conditions of employment." In this instance, the undersigned finds the threshold was crossed and that Brother Nakanelua should have held a vote among the affected members at the juvenile detention center before entering the Attendance MOU.

Finally, Paragraph 7 of the Bill of Rights requires that members receive "pertinent information" needed for the exercise of their rights, and this includes a copy of agreements they are subject to. Although this was not explicitly raised as a violation of the constitution in his charge, Brother Akau received only excerpts of the Attendance MOU from his employer when it was being applied after a covered absence. When Brother Akau requested a full copy of the Attendance MOU from UPW, it took some seven months and the filing of internal union charges before Brother Akau received the Attendance MOU. Brother Nakanelua should take steps to ensure that agreements, when requested, are provided by UPW to members on a timely basis.

DECISION

Brother Nakanelua's motion to dismiss the charges is denied. In addition, as explained in this decision, the undersigned rejects all the procedural defenses submitted at and after trial as being without merit.

On the substance of the charge, Brother Nakanelua is found guilty of a violation of Paragraph 7 of the UPW Bill of Rights. He is assessed a reprimand and a warning not to engage in the same action in the future. Going forward, UPW members must be provided with their right to discuss and vote on collective bargaining agreements and MOUs that affect their wages, hours or other terms and conditions of employment.

April 3, 2019
Olympia, WA

Greg Devereux
International Vice President
AFSCME

Wednesday, August 8, 2018

Edward Akau Jr
c/o 91-1324 Kinoiki Street
Kapolei, Hawaii, 96707

Gerald Aquí, State Secretary/Treasurer, United Public Workers
1426 North School Street
Honolulu, Hawaii 96717-1914
Phone (808) 847.2631, Fax (808) 848.1987

Certified Mail: 7018 0046 0001 0194 9419

Aloha Gerald,

As instructed by the AFSCME, Article X- Procedure, Section 6. **Charges shall be in writing** and shall be signed by the member or members bringing the charges. The charges shall be specific, citing in detail the nature, the date, and the circumstances of the alleged offense and, where a violation of a constitutional provision is alleged, the specific section shall be cited, along with the specific act or failure to act which constitutes the alleged violation. **The charges shall be filed with the secretary** of the trial body or, if the secretary of such trial body is a directly interested party, with the presiding officer of the trial body.

Therefore as the Secretary of the trial body, I would like to file charges based on the following violations:

UNITED PUBLIC WORKERS, AFSCME, Local 646, AFL-CIO, CONSTITUTION;

Bill of Rights for Union Members- 7. Members SHALL have the right to full participation, through discussion and vote, in the decision making processes of the Union, and to pertinent information needed for the exercise of this right. This right SHALL specifically include decisions concerning the acceptance or rejection of collective bargaining contracts, memoranda of understanding (MOU, MOA) or any other agreements affecting their wages, hours or other terms and conditions of employment. All members SHALL have an equal right to vote and each vote cast shall be of equal weight.

Article 1, Aims and Principles- a. An injury to one is an injury to all.

Article 8, State Officers, Section 3. State President- The State President shall: g. Interpret the Constitution of the Union whenever questions arise, but the President's interpretation shall be subject to the approval of the State Executive Board.

On April 20, 2016, UPW State Director, Dayton Nakanelua entered into a Memorandum of Understanding (MOU) with the Judiciary to implement a pilot project – attendance program. The pilot program commenced in April of 2018 and continuing through April of 2019.

The members of the Detention Home were never given an opportunity to full participation, through discussion or vote in the decision making process of the above-stated MOU that directly affects our wages, hours, and other terms and conditions of employment.

To my knowledge the State Executive Board has never approved the State President's interpretation.

Via: Telephone conversation with State President James Wataru who interpreted Bill of Rights #7 as the members right to full participation in the decision making process and to vote on the agreement being agreed to.

Remedies sought: Issue 30 day notice of cancellation of MOU and utilize the ratified contract language of the BU 10 CBA section 37.17.

PLEASE RESPOND IN WRITING UPON RECEIPT OF THIS LETTER.

Signed: Edward Akau Jr



Date: 8/08/2018

EXHIBIT "7"

cc: UPW State Executive Board Oahu Division

UPW.Wataru,

TAUM000106